Economic
Commission
for Africa

African Governance Report

2005

Ordering information

To order copies of African Governance Report by the Economic Commission for Africa, please contact:

Publications
Economic Commission for Africa
P.O. Box 3001
Addis Ababa
Ethiopia
Tel: +251-11-544-3770
Fax: +251-11-551-0335
E-mail: ecainfo@uneca.org
Web: www.uneca.org

©Economic Commission for Africa, 2005
Addis Ababa
Ethiopia

All rights reserved
First printing November 2005

ISBN 92-1-125098-6
Sales number E.05.II.K.7

Material in this publication maybe freely quoted or reprinted. Acknowledgement is requested, together with a copy of the publication.

Edited by Communications Development, Incorporated, USA. Layout by KPTO, Denmark. Cover design by DSCOPE, Ethiopia. Production management by the ECA Communications Team. Printed by the ECA Documents Reproduction and Distribution Unit (DRDU).

Cover photos provided by the World Bank, the United States Agency for International Development and Economic Commission for Africa (A. Fiorente).

Contents

Foreword xiii

Acknowledgements xvii

Executive summary 1

1 Political governance 17

Democratic regime and structure of political representation 17
Adherence to constitutionalism 20
Evolution toward multiparty democracy 20
Leadership systems: presidential, parliamentary or hybrid 22
Governmental structures: federal, unitary or confederal 24

Social inclusiveness in political representation 26
Regional, ethnic, religious and racial representation 27
Gender representation 29

Public voices and the legitimacy of the political framework 33
Media explosion 34
Growth of civil society 36
Making choices through voting 36

The integrity and legitimacy of the electoral process 37
Political parties 38
Credibility and transparency of the electoral process 48

Concluding remarks 52
Notes 53
References 53

2 Economic governance and public financial management 55

Progress in public financial management and accountability 56
Smaller national budget deficits 56
Medium-Term Expenditure Framework and similar schemes 57

Indirect taxes and rent from depleting resources 59
Domestic product as revenue 60
Revenue mobilization targets 61
Tax evasion, corruption and lack of transparency in the tax system 62
Efficiency of the tax system 63
Equitability of the tax system 64
International initiatives to strengthen fiscal transparency and auditing 65
Institutions and arrangements for internal control and audit 68
Effective followup on the auditor general's report 70

Greater integrity in the monetary and financial systems 71
Progress in enhancing transparency 72
Central bank's independence 74
Regulatory and supervisory bodies 76

Concluding remarks 79
Notes 80
References 80

3 Private sector development and corporate governance 81

Development of the private sector 82
Tax incentives 82
Other incentives and support for investors 86
Capital, training, information and other assistance 87
Institutions to simplify procedures and reduce costs 91
Enabling environment for private sector development 94

Public and private partnerships 98
Efforts to develop infrastructure 98
Privatising state-owned enterprises 99
Mechanisms for business competition 100
Evolving partnership 101

Protecting property rights and improving corporate governance 103
Rights to land, property and labour mobility 103
Access to credit 105
Patents and intellectual property rights 106
Shareholders' rights 107
Laws on business contracts 109
Accounting and auditing standards and practises 110

Concluding remarks 111
References 112

4 Institutional checks and balances 115

Separation of power allows for checks and balances 116

The dominance of the executive is slowly waning 118

Towards more checks and balances on the executive 119
New institutions and mechanisms 121

Effectiveness of the legislature 122

Effectiveness of the judiciary 128

Effectiveness of nonstate actors 131
Civil society organisations' influence on policies and programmes 31
Effectiveness of the media 133

Concluding remarks 135
References 136

5 Institutional effectiveness and accountability of the executive 137

Institutional capacity 137
Quality of the executive and the public service 138
Popular legitimacy of the public sector 139
Remuneration, training and facilities in the public sector 141
Capacity of local governments 142

Transparency and accountability 145
Big Man or democratic leadership? 147

Corruption 147
Integrity of public institutions 151

Policy-making process and coherence 152
Levels of coordination and coherence 153

Service delivery 154
Addressing poverty with social services 155
Approaches and institutional channels for service delivery 156
Access, affordability and quality of public services 157

Response to the HIV/AIDS pandemic in Africa 163
The governance challenge 164

Concluding remarks 166
References 168

6 Human rights and rule of law 171

The African human rights framework 172

The state of human rights and rule of law 174
Acceptance of human rights and rule of law 175
National constitutions and laws 175
Popular perceptions 176
Violations by law enforcement agencies 177
Civil and political rights 180
Economic, social and cultural rights 183
Equal access to justice 183
Gender equality and women's rights 185

Institutional mechanisms for safeguarding and enforcing human rights 187
National human rights enforcement mechanisms 187
The role of civil society organisations 189
Human rights commissions 191
Effectiveness of the judiciary 191
Monitoring of human rights 192

Concluding remarks 193
Building awareness of rights 194
Fostering a culture of protection 194
Building and supporting strong, independent institutions 195

Note 196
References 196

7 Institutional capacity building for good governance 197

Background and challenges to capacity deficits 198

Context and environment for capacity building 199

Capacity gaps in state actors 201
The legislature 201
The judiciary 204
The executive 206

Capacity gaps in nonstate actors 209
Civil society organisations 209
Political parties 210

The private sector 211

Towards enhancing capacity development 213
The legislature 214
The judiciary 216
The executive 219
Nonstate actors 221

Annexes

1 ADF IV Consensus statement 225
2 ECA Project on Good Governance 241
3 African governance indicators 249
4 Other indicators of governance 263
5 Comparing Africa governance indicators with others 265

Boxes

1.1 Ethnoregional diversity and rights in Ethiopia's federal system 26
1.2 Empowering women in Namibia 33
1.3 Funding of political parties 43
2.1 Introduction of the MTEF enhances the participation of civil society in public financial management in South Africa 58
2.2 Reforms in the administration of the tax system in South Africa lead to efficiency in resource mobilisation 61
2.3 Ghana and Lesotho take decisive measures to fight tax evasion 64
2.4 Namibia's measures to promote fiscal transparency 67
2.5 Botswana fights corruption through the directorate on corruption and economic crime 69
5.1 Voice and power for women in Botswana 141
5.2 Commitment to training and capacity building in Mauritius' civil service 143
5.3 Developed countries must tackle corruption in poorer countries 150
6.1 NEPAD affirms respect for human rights in Africa 173
6.2 Vigilante groups supplant the police in crime control in some countries 180
6.3 Police reforms in Botswana enhance protection of human rights 181
6.4 Egypt makes significant efforts in empowering disabled people 183
7.1 Botswana: enhancing legislative capacity 215
7.2 Ghana: civil society organisation helps strengthen the capacity of parliament 216
7.3 Senegal develops programme to enhance judicial performance 217
7.4 Lesotho: public sector reforms initiated to boost executive capacity 220
7.5 Civil society engages the Poverty Reduction Strategy Papers in Ethiopia 222

Tables

2.1 Government revenue as a share of GDP for selected African countries 61
2.2 Expert opinion on the equitability of the tax system 65
2.3 Expert opinion on the effectiveness of the legislature in holding the executive accountable 72

3.1 High administrative barriers to foreign investment in selected African countries 92
3.2 Levels of foreign direct investment inflows, by country, 1992–2002 96
4.1 Formation of the executive in African countries 119
4.2 Governments with constitutional or official accountability agencies 121
4.3 Expert opinion on the parliamentary election mode 124
5.1 HIV/AIDS prevalence in selected African countries 165

Figures

1.1 The African Governance Report core indicators and sub-indicators 18
1.2 Household opinion on the competitiveness of the political system 19
1.3 Expert opinion on checks and balances in national constitutions 20
1.4 Democratic pluralism based on party regime 21
1.5 Structure of government 22
1.6 Expert opinion that local government administrations have no or only poor capacity to manage their decentralised responsibilities 25
1.7 Expert opinion on the composition of senior public servants in Botswana and Chad 27
1.8 Household opinion on whether the government treats all citizens fairly regardless to which region, community or group they belong 29
1.9 Expert opinion on how government services address the needs of women 30
1.10 Classification of countries based on gender affirmative action policies and levels of political participation by women 31
1.11 Expert opinion on civil society independence in Benin and Gabon and mass media independence in Mali and Zimbabwe 34
1.12 Household opinion on the most useful sources of information 35
1.13 Household membership in associations and political organisations 37
1.14 Citizens' participation in public affairs 37
1.15 Expert opinion on the legitimacy of the electoral authority 46
1.16 Expert opinion on the credibility of the electoral system 49
1.17 Expert opinion on the degree of election control being ensured by the electoral system 51

2.1 Overall governance index and economic governance index are positively associated with GDP per capita 56
2.2 Government deficit as a share of GDP at current prices, 1980-2001 57
2.3 High dependence on indirect taxes for public revenue, latest year available 59
2.4 Government revenue as a share of GDP, 2001 60
2.5 Expert opinion on tax evasion and corruption in the tax system 62
2.6 Expert opinion on the equitability of the tax system in Botswana, Mauritius, Niger and Ethiopia 65

3.1 Expert opinion on the tax system's influence on local and foreign investment 84
3.2 Expert opinion on the tax system's influence on business development 85
3.3 Expert opinion on whether governments recognise the importance of the informal sector in the economy 89
3.4 Household opinion on whether access to credit for agricultural activities is easy 90
3.5 High cost per procedure of private investment in Africa 93
3.6 Expert opinion that the development of the private sector is always or usually encouraged by government policies that provide an enabling environment 94

3.7 Foreign direct investment stock in developing countries, 2002 95
3.8 Developing countries foreign direct investment inflows, 1999 and 2002 95
3.9 Expert opinion that crime and insecurity are often or always obstacles to conducting business 97
3.10 Expert opinion on the private and public sectors as effective partners in development with effective or somewhat effective collaborative mechanisms 102
3.11 Expert opinion on whether government policies and practices facilitate the operation of markets in all parts of the country 106

4.1 Expert opinion on whether the opposition in parliament has a strong or moderately strong influence on government policy, programmes and legislation 117
4.2 Household opinion that local associations are being consulted by local governments and the central government 120
4.3 Expert opinion on the independence of watchdog organisations from the executive and their effectiveness in promoting the protection of citizens' rights 123
4.4 Expert opinion on the relevance of parliamentary debates in South Africa, Tanzania, Mali, Nigeria and Chad 125
4.5 Expert opinion that the legislature is free from subordination to external agencies in most or all areas of legislation 126
4.6 Expert opinion on whether the legislature is largely or completely corrupt 127
4.7 Household opinion on the performance of the national assembly or parliament 127
4.8 Expert opinion on independence of judiciary from other branches of government 129
4.9 Expert opinion on degree of civil society independence from the government 132
4.10 Expert opinion on the influence of civil society organisations on government policies and programmes 133
4.11 Expert opinion on the independence of the mass media 134

5.1 Expert opinion on appointments, promotions and career development of civil or public servants as strictly or largely governed by merit-based principles 139
5.2 Gender representation in senior executive positions in the civil service in selected countries 140
5.3 Expert opinion on regional, provincial and state councils and local and district assemblies as constituted on a competitive basis 143
5.4 Expert opinion on local government procedures for resource allocation for service delivery 144
5.5 Governance index on civil service transparency and accountability 146
5.6 Expert opinion on corruption in the tax collection system 149
5.7 Expert opinion on whether the executive is largely or completely corrupt 150
5.8 Household opinion of corruption among public officials 152
5.9 Expert opinion on the extent to which the government is free from subordination from external agencies in major areas of policy in selected countries 153
5.10 Household opinion on the most serious national problems and confidence that government will deal with them 155
5.11 Expert opinion on whether government services address the needs of the poor 157
5.12 Government index on the efficiency of government services 158
5.13 Household opinion on the quality of government health services provided equitably 159
5.14 Household opinion on the quality of educational services in the community 160
5.15 Household opinion on access to the nearest primary and secondary public school 161
5.16 Household opinion on the cost of services obtained in government-owned medical facilities 162
5.17 Household opinion on access to affordable housing 163

6.1 Household opinion that human rights violations were the most serious national problem 173
6.2 Expert opinion on government respect for due process and the rule of law 176
6.3 Expert opinion that civil and political rights provided for in the constitution are always or usually being respected 177
6.4 Household opinion on police performance 178
6.5 Household opinion on whom to turn to for help in response to crime in Tanzania, Mozambique, Lesotho and Uganda 179
6.6 Expert opinion on citizen's confidence in law enforcement organs to protect them from theft and crime 181
6.7 Expert opinion that electoral authority is rarely or never impartial and transparent 182
6.8 Expert opinion on citizen access to first instance or lower courts within three days in Namibia, Malawi, Gabon, Niger and Mozambique 184
6.9 Expert opinion on citizen access to justice in court irrespective of economic or social status 185
6.10 Expert opinion on the reporting and action taken against women's rights violations 186
6.11 Expert opinion on the independence of the operations of public complaints and watchdog organizations from the executive 188
6.12 Expert opinion on the reporting and monitoring by government and civil society of human rights violations by the police and prisons 190
6.13 Household opinion that public prosecutors and judges are expected to demand bribes 193

7.1 Expert opinion on the acceptance of the democratic framework 200
7.2 Expert opinion on the influence of opposition parties in parliament on government policy, programmes and legislation 203
7.3 Expert opinion on the independence of the judiciary in Namibia, Egypt, Mali and Cameroon 204
7.4 Expert opinion on citizen accessibility of first instance or lower courts within three days in Morocco, Lesotho, Cameroon, South Africa and Ethiopia 206
7.5 Expert opinion on the capacity of local governments and administrations 208
7.6 Household opinion on whether complaints about poor services given by the local government are dealt with satisfactorily 209
7.7 Expert opinion on the encouragement by the government for the effective operation and involvement of the private sector 212
7.8 Expert opinion on whether the private and public sectors are partners in development 213

Data Notes

The African Governance Report is based on data and analysis from the National Country Reports on governance submitted by the national research institutes contracted by the Economic Commission for Africa (ECA) in 27 countries as part of a large-scale project on measuring and monitoring progress towards good governance in Africa. All information and data presented are extracted directly from the report unless otherwise indicated.

Because much of the analysis is based on perceptions, considerable caution should be exercised in cross-country comparisons, since the political, social and economic environment differs significantly from one country to another. The perceptions research provides a picture of the state of governance in each country only as perceived by citizens of each country at the time of the research.

Furthermore, when tallying data, responses do not add up to 100% because of of non-responses.

Foreword

The *African Governance Report (AGR)* is the result of extensive research covering governance practices in 27 African countries undertaken by the Economic Commission for Africa (ECA) through national research institutions, which altogether sampled opinions from over 50,000 households and 2,000 experts. The findings, which were submitted to ECA between 2002 and 2004, were subjected to a rigorous process of reviews that involved both national and international experts working on governance, political and economic issues.

The report is the first major Africa-driven study of its kind, which aimed at gauging more empirically citizens' perceptions of the state of governance in their countries, while identifying major capacity deficits in governance practices and institutions- and recommending best practices and solutions to address them. Emphasis was placed on local ownership of the resultant empirical body of knowledge to strengthen the legitimacy and effectiveness of policy-making and advocacy at the country and subregional levels. The data thus generated can be used as performance benchmarks by governments and all major stakeholders in addressing the concerns expressed by the citizenry and serve to monitor how faithfully the compact between them is carried forward. We have been careful not to be too prescriptive. The AGR contains recommendations that are essentially informed by country-specific realities as governance must be contextualized and home grown for it to be sustainable.

When ECA embarked on discussions for this project, the political will of African leaders to improve governance was already evolving across the continent. Consider the New Partnership for Africa's Development (NEPAD), which identifies democracy, human rights and good governance as the core challenges for moving the continent forward. Today, a new group of African leaders is committed to systems and institutions that are more accountable, more transparent and more sensitive to human rights and the rule of law. Nonetheless, much more is needed to advance the emerging consensus on the primacy of the capable state to sustain peace and security, promote the flourishing of civil society and the private sector, create an enabling environment for sustainable growth and development, and ensure a more just and equitable society.

The positive news is that the research findings show encouraging governance trends across the continent in significant areas. To begin with, democratic electoral transitions are becoming the constitutionally accepted mechanism for changes of power. Several African governments are in their third successive era of democratic changeover of power. Furthermore, Africa's political dispensations are

increasingly becoming more inclusive of all social groups, contributing to political stability. Women's participation in all political institutions, especially in the legislative and the executive branches, has improved significantly in some countries, though for most, it falls short of the thresholds recommended in the Beijing +10 Platform for Action.

The findings also show movement towards greater voice and accountability in the political process. More civil society groups, including the media, can now operate with much greater freedom and participate in different spheres of decision-making than in the past, though several of these organizations suffer from their own governance and capacity deficiencies. Mindful of the glare and scrutiny of these non-state actors, governments are becoming more responsive and transparent. Public financial management and accountability have also improved considerably. More countries are recording smaller budget deficits, meeting their revenue mobilization targets, demonstrating more transparency in monetary policies and improving the auditing of public funds.

Despite the considerable positive changes taking place, many challenges remain—some more daunting than others. Based on citizens' perceptions, a few noteworthy areas deserve considerable attention. Many countries still score quite low on the control of corruption, the integrity of tax systems and on the transparency, accountability and effectiveness of most branches of government, especially the civil service. Most respondents ranked the quality of government service delivery as very poor and decentralization processes as inadequate. Almost without exception, citizens and experts alike acknowledged the lack of capacity, or the inadequacy of human and material resources, as a major source of the ineffectiveness of governance institutions.

Notwithstanding the developments on the continent, it is generally accepted that better governance in Africa cannot be entrenched without the active support of our development partners. Recent encouraging actions include the joint initiatives such as the Mutual Review of Development Effectiveness, a joint ECA-OECD mechanism for ensuring that the commitment to good governance, fair trade, more resources for Africa's development and debt relief are met. The recent publication of the Commission for Africa report, which is far-reaching in its analysis of Africa's development path, and its attendant recommendations, when implemented, will go a long way in alleviating poverty and meeting the Millennium Development Goals. Lastly, there is the recent momentous decision by the G8 to cancel the debt of 18 developing countries, of which 14 are African. There is also a commitment to cancel the debt of many more in the future.

A synopsis of this report, *Striving for Good Governance in Africa*, was discussed at the Fourth African Development Forum (ADF IV), held in Addis Ababa from 11-18 October 2004 under the theme of "Governance for a Progressing Africa". The deliberations produced a consensus statement that endorsed the key findings of the report and an action plan for addressing capacity deficits in all institutions of governance (see annex 1). Moving forward will require concerted and painstaking efforts to address all the core elements of good governance—political governance, institutional effectiveness and accountability, and economic management and corporate governance. With utmost urgency and creativity, Africans and their

development partners must address the challenge of capacity by ensuring that demand-driven cross-cutting initiatives are sustainable—by developing, improving and retaining local knowledge. This must not be about resources alone, but about how to change institutional cultures and past policies at odds with effective capacity development and use.

In preparation to further this work in other countries, we took a step backwards in order to examine some of the lessons learned in the process. At an expert group meeting with the research institutes, we garnered solid advice on refining and improving the methodology and our collaborative efforts to ensure the highest levels of quality control while controlling costs, which we embrace wholeheartedly. In the meantime, as a concrete extension of our governance work, we have been making technical contributions to the African Peer Review Mechanism in partnership with the African Union, the African Development Bank, the United Nations Development Programme and the secretariat of NEPAD. Some 23 African countries have now acceded to the mechanism, reinforcing their commitment to institute good governance as the way forward. ECA has already contributed to technical support missions to Ghana, Kenya, Mauritius, Nigeria, Rwanda and Uganda and is committed to expanding this research to more countries and through broader partnerships for capacity development.

Since we completed the study in May 2004, there have been no major changes in the overall state of governance to significantly alter the main findings and recommendations. However, some notable developments, particularly in the area of universal suffrage, deserve mention to account for some of the emerging positive trends that were unfolding over the course of 2004 and 2005. For example there were elections in Benin and Nigeria in 2003, in Botswana, Ghana, Malawi, Mozambique, Namibia, Niger, and South Africa in 2004, and in Mauritius in 2005. And in Ethiopia, the May 2005 third multi-party elections were more open, free and participatory than any previous election the country had ever had. Unexpectedly, though, the process was marred by the outbreak of violence following the release of the preliminary results. In Uganda, voters overwhelmingly restored a multiparty political system in a constitutional referendum held on 28 July 2005. All these electoral developments augur well for a future of Africa, where unconstitutional political usurpation will be a thing of the past, and where the power of the bullet will irreversibly give way to the power of the ballot.

This notwithstanding, there are still a number of areas where progress needs to be accelerated. One such area is the practice of “president for life”. Although, this seems to be fading away and may before long become a relic of the past, political leaders in some countries seem reluctant to let go the fervent desire to cling to power and preserve their rule through attempts to secure amendments to constitutional term limits, thus permiting them to run for third or indefinite terms. However, not all of these efforts have succeeded due in part to the increasing vigilance and perseverance of civil society and opposition parties against them.

In conclusion, let me say that I am mindful of the fact that governance is a process, subject to the vagaries of endogenous and exogenous challenges. It is therefore to be expected that current positive trends will be subjected to these imperatives as

the natural birth pangs of any transition, especially one that is so recent as Africa's. I do not wish to underestimate what lies ahead, but at the same time I am very hopeful that bold and innovative policy choices will secure a brighter future for the continent.

K.Y. Amoako
Executive Secretary
United Nations Economic Commission for Africa

Aknowledgements

This report is the culmination of a five-year effort by the Economic Commission for Africa (ECA), under the intellectual leadership and foresight of Executive Secretary K.Y. Amoako and the painstaking administrative guidance of James Nxumalo, former director of the Development Policy and Management Division (DPMD).

The whole project would not have been possible without the generous financial support and, in some instances technical support, of our donor partners. We are grateful to the Ford Foundation, whose contribution financed the workshop that provided the forum for intellectual thinking on the whole governance work of ECA, including the concept of governance as applied to the African situation and formed the basis for kick-starting the project. The governments of Germany, the Netherlands, Norway, Sweden and the United Kingdom and the African Development Bank all provided generous financial support to the process, especially for the country reports. Their commitment to the development of democracy and good governance in Africa is amply demonstrated through this project.

It would have been impossible to evaluate the 27 countries covered in this report without the involvement of the 27 research institutions contracted to undertake the studies. Many thanks and gratitude is owed to the collaborating institutions that conducted the surveys and produced the country reports. They have affirmed ECA's faith in Africa's institutions to undertake huge and credible research projects such as this one.

In conceiving and implementing this project, DPMD benefited from the administrative guidance of its director, Ronald Hope, and two of its officers-in-charge, Abdalla Hamdok and Jennifer Kargbo. The project also profited from the leadership of Okey Onyejekwe. The substantive and administrative support of DPMD's staff, namely, Lubaba Abdella, Samira Achkar, Yeshimebet Araya, Jide Balogun, Kojo Busia, Pierre Demba, Kaleb Demeksa, Assefa Gebre, Tighist Gebreab, Mulu Habtemariam, Ferdos Issa, Doreen Kibuka–Musoke, Carolyn Knapp, Roman Legesse, Guillermo Mangue, Emebet Mesfin, Mzwanele Mfunwa, Monique Nardi Roquette, Frederick Nikiema, Stéphane Oertel, Guy Ranaivomanana, Taye Said, Dawit Tesfaye, Rebecca Work Emmanuel and Hodane Youssouf, proved invaluable.

To facilitate the country research process, the project team collaborated with the ECA subregional offices in Kigali, Lusaka, Niamey, Tangier and Yaoundé. The project team is grateful to all the officers who went on mission to supervise the work on

the ground—and especially to the directors, Mbaye Diouf, Hakim Ben Hammouda, Hachim Koumare, Dickson Mzumara, Halidou Ouedraogo and Abdelouahab Rezig for placing their resources at our disposal.

We owe a debt of gratitude to the consultants who worked tirelessly to bring this project to completion, including Said Adejumobi, John Heilbrunn, Abdul Aziz Jalloh, Gervase Maipose, John Mbaku, Ahmed Mouhiddin and Muna Ndulo, who together produced the first draft of the report.

The technical, statistical, leadership and guidance was provided by Ejigou Ayenew to whom ECA is very much indebted.

The report benefited from technical reviews from Agbaje Adigun, Asmelash Beyene, Eddy Maloka and Adebayo Olukoshi. The project team also wishes to acknowledge the technical input of colleagues from other divisions of ECA, namely, Chantal Dupasquier, Augustin Fosu, Adrian Gauci and Kasirim Nwuke, in enhancing the overview.

Special thanks to Thomas Roncoli, Bruce Ross-Larson, Christopher Trott and the whole team at Communications Development Incorporated and to Hanne Rasmussen and Jakob Bay at KPTO, Denmark, who helped bring this book to its final fruition.

Executive summary

Political governance

Democratic politics and practises have taken a significant leap in Africa in the last two decades. Competitive multiparty democracy has been enthroned in many African countries. The political space has been gradually liberalised but despite these advances, challenges to political governance remain in many African countries. The democratic process is often fragile, uneven, tenuous and remains weak and barely institutionalised.

Democratic regimes and political representation expanding

The scope of political representation has widened through various democratic structures that represent the people. Subsequently, many African countries now have a multiparty democracy with varying degrees of stability, acceptance and legitimacy. While a remarkable development that almost all countries in Africa have embarked on the democratic process, conscious efforts are needed to build on emerging structures and processes and to consolidate the modest progress so far into democratic practise.

The survey of experts shows progress as the openness of the political system, political party freedom and security, power distribution and independence of the electoral process are the indicators that scored highest in the African Governance Project. Civil society and media independence and judicial and legislative effectiveness, have also scored quite high—with percentages above 53%. However, decentralisation, as a sub-indicator of executive's effectiveness in terms of power distribution, has the lowest score—below 40%.

The culture of political authoritarianism manifested in military dictatorships and one-party systems dominant in many African countries has in the last two decades gradually given way to competitive party democratic systems. And most countries have embarked on constitutional reviews to promote a culture of adherence to rule of law, due process and political accountability.

More social inclusiveness an aim

Deliberate efforts have been made through constitutional provisions, conventions or informal arrangements to reflect the diversity of African societies in the organs of government, especially in the executive and legislature. Despite this important progress made, large discrepancies occur along ethnic, regional, religious, gender and other marginalised social group lines. Asked if the composition of the public ser-

vice was representative, on average across project countries, only 30% of experts reported that the composition of senior public servants fully or largely reflects the cross-section of society, and 36% indicated it never did.

Many countries are also striving to achieve gender representation. With women constituting more than half of the continent—population and working force, democracy cannot be fully realised without their empowerment. Progress has been made to redress the historical injustice suffered by women but the process has been gradual, slow and sometimes frustrating in many countries. Several factors hinder the participation of women in the political process. For instance, the patriarchal nature of African societies—including traditions, customs, laws and mores that suppress women—prevents their further advancement.

Public voices more vibrant but challenges remain

The government no longer monopolises the public sphere; the people also participate in it. The role of the state in the media business is now limited more to regulation than investment in the sector. On average across project countries, about 56% of experts stated that the media operate within a completely or mostly free and competitive environment. Accordingly, there are challenges in terms of expanding public voices. A great number of civil society groups have emerged to promote and advocate for human rights, gender, the environment, children, and the like. However, some governments in countries where the legacy of authoritarian rule has yet to recede still suppress the operation of civil society organisations by imposing draconian laws on their activities and keeping the media under the sledgehammer of the state.

Voting is another major form of political participation and a parameter of the legitimacy of a democratic system. Some 88% of the households surveyed reported participating in elections, making it the most common form of input to public affairs, followed by attending political party meetings and rallies. High voter turnout engenders confidence in the political process, though voter turnout patterns differ by country. In Malawi, South Africa and Tanzania, for instance, the voting rate was found to be higher.

Integrity and legitimacy of the electoral process increasing

In most African countries although political parties have constitutions, internal procedures and rules that on the surface are democratic, many of them display authoritarian tendencies. In nearly all countries, the law guarantees freedom of operation, yet the reality may differ. Although with notable exceptions, more than 70% of the experts across countries agreed that opposition parties enjoy reasonably good security without interference from the state or the ruling party.

In theory most countries have a legal framework that espouses the autonomy of electoral institutions. They handle all aspects of elections, including voter registration, preparation of the register, political party registration and conducting of elections. The main challenge with electoral commissions is guaranteeing their autonomy in order to ensure free, fair and credible conduct of elections and resolution of post-election conflicts. These issues are highly contentious and spark serious controversy

in many countries. Accordingly, the opinions of experts on the legitimacy of the electoral authority are widely split.

On average across project countries, the majority of the experts (62%) believe that the overall electoral system is credible, as all parties fully or largely accepted it, while only 17% believe it is not. In terms of transparency, however, the majority of experts (48%) find that the electoral system is not transparent. As the democratic culture grows in Africa, elections would be better domesticated and results of elections less contentious. Some progress has been made in this regard indicating a growing capacity of electoral institutions to better manage the electoral process.

Economic governance and public financial management

Along with the concern for good and effective political governance has been the concern for good economic management and corporate governance, which requires efficient and effective public financial management and accountability and integrity of the financial and monetary system.

Progress registered in public financial management and accountability

The key issues to be examined in assessing the quality of the budget process are degree of discipline, efficiency in revenue mobilisation and extent of transparency, accountability and control in the tax system. Of 25 countries examined, 17 reduced their budget deficits and 8 worsened them between 1980-90 and 1991-2002.

The Medium-Term Expenditure Framework (MTEF) is widely regarded as an important mechanism for ensuring budgetary discipline by linking policymaking, planning and budgeting. There have however been disappointing results in African countries from the introduction of the MTEF.

A lion's share of domestic product claimed by the government

In general, government revenue in African countries accounts for a rather sizeable share of gross domestic product, with the private sector accounting for less, as compared to other developing countries. For most African countries, taxes, especially indirect taxes, are the most important source of revenue. In 2000 indirect taxes accounted for 42.7% of revenue for Africa as a whole and 45.1% for Sub-Saharan Africa. Another main source of public revenue for many African countries is rent from non-renewable resources, such as oil, diamonds and other minerals. These resources are being depleted and income from them tends to be highly volatile. Overall, balance is needed in government revenue to avoid crowding out the private sector.

Tax evasion, corruption, and lack of transparency pose serious challenges

Revenue shortfall is a major reason for budget deficits and lack of budgetary discipline. For instance, in 18 countries, more than a half of the experts surveyed indicated that tax collection is mostly or always affected by tax evasion. Across all project countries, on average 53% of the experts said it is mostly or always affected by

evasion. Furthermore, only some 15% of the experts surveyed in 27 countries said that tax collection is never or rarely affected by corruption. Only in Botswana and Namibia did more than a half give this reply. The average share of experts surveyed who said that tax collection is mostly or always affected by corruption was 51%.

Related to tax system management, in only two African countries (Namibia and South Africa) did more than a half of the experts surveyed state that it is highly or largely efficient. An average of only 20% of all experts surveyed said that the tax system is highly or largely efficient, compared with about 42% who reported that it is poorly managed.

In a globalised world, fiscal transparency has become a universal concern. Several African countries have made progress in introducing greater transparency in their fiscal systems, though challenges remain. A key problem has been procurement systems, which in most African countries after independence lacked transparency, had outdated procedures and experienced a high degree of corruption and rent seeking.

Ineffective Institutions and arrangements for internal control and audit

There are shortcomings in the systems of internal control and in the supreme audit institutions as well. In most African countries, the auditor general's report is sent to parliament for discussion and action, although not always in due time for review. Parliamentary oversight is therefore not effective in all countries. On the whole, the performance of African countries in this area is negative, mostly due to the lack of resources and procedures in the auditor general's office, deficiencies in the powers and exercise of oversight functions by parliament and a lack of cooperation by the executive branch of the government.

Greater integrity in monetary and financial systems

Several African countries have increased the transparency of their monetary and financial systems. However, while most of the central banks in the continent have independence and autonomy on paper, in practice their independence is sharply curtailed. This and the weak capacity of the regulatory and supervisory institutions have limited the effectiveness of these institutions.

Among the obstacles to effective regulation and supervision of the financial system in Africa are the multiplicity of regulatory and supervisory bodies with overlapping responsibilities but no effective mechanisms for coordination, the failure to implement rules in place because of political interference and gaps in enforcement procedures.

The question of leadership and how seriously it is committed to sound public financial management and accountability and the integrity of the monetary and financial system is central, as is the question of the ability of other institutions of government and civil society in general to control the executive and make it accountable. Another equally important shortcoming that needs to be addressed is the absence of the necessary capacity in many African countries to implement well-intentioned reform programmes and measures.

Private sector development and corporate governance

An integral part of African countries' commitment to sound macroeconomic and public financial management since the mid-1980s has been the strategy of private sector–led growth and development.

Inadequate support for the development of the private sector

African countries have adopted a wide range of measures to attract private investment. However, except in a few countries endowed with depleting mineral resources, these efforts have not increased the flow of investment, especially FDI. Of the 31% of the FDI stock in developing countries in 2002, only 2% was in Africa. Due to the absence of a conducive environment, by and large, the private sector remains weak.

The tax incentives that African countries offer as inducements for investment, both local and foreign, are impressive. Despite the many incentives being granted by African countries to attract private investment, only an average of 24% of the experts surveyed indicated that the tax system encourages local investment in all or most sectors.

African countries have used other measures to attract investment, such as assisting with access to land, labour, reserving some sectors of the economy for nationals to promote their development and assisting with training, management and information and marketing. These measures are particularly important to local investors, especially micro and small investors.

Assistance for the development of the informal sector improving but not sufficient

The informal sector plays an important role in the economies of several African countries as a source of employment and an important instrument in poverty alleviation. Recent data on a few countries suggest that the informal sector is growing rapidly, though it is still generally weak. There are still several bottlenecks to the development of this sector, including access to infrastructure, services and modern technology and inadequate managerial talent. For instance, the vast majority of households surveyed indicated that access to credit for agricultural activities was not easy. While only 14% said that it was easy.

Administrative barriers and costs still exist

African countries have realised that lengthy procedures and high costs to establish and operate a business are costly to investors and may drive them to locate elsewhere.

Efforts to reduce the administrative barriers and costs have been only partially successful. More than a half of the experts surveyed in 11 countries said that the development of the private sector is always or usually enhanced by government policies that provide an enabling environment. Insecurity has often been mentioned as a serious obstacle to private investment and growth in Africa as well.

Public and private partnerships growing

Although privatisation has been slow in some countries, the private sector is increasingly seen as a partner of the public sector. The main problem encountered by African countries in the privatisation process is that many state enterprises are not viable enough to attract private sector interest.

Similarly, some African countries have been taking steps to improve their infrastructure through public and private investment, better maintenance of existing facilities and removing regulations and other restraints. Despite these efforts, African countries have not attracted as much private investment in infrastructure. The overall investment climate in Africa, and the relatively low effective demand for infrastructure facilities, makes investment in them less profitable than similar investments in other developing regions.

Evidence from the national country reports shows that the partnership between the public and private sectors in African countries is not as strong as it should be. The reasons for this include the remaining suspicion and hostility towards the private sector, weak institutions and mechanisms to make the partnership effective and the fact that the private sector, especially the indigenous private sector, is still nascent and lacks the capacity, experience and analytical skills to become an effective partner of the public sector.

Institutional checks and balances

A vast majority of the post-independence constitutions embody the principles of the separation of power. However, over time these provisions were systematically weakened, revised, suspended or replaced with ones that had a concentration of power in the executive branch. Governance structures were undermined as well due to the lack of adherence to constitutional provisions. One of the major challenges confronting good governance in Africa is how to effectively constrain the executive's power and creatively balance its discretionary authority while not diluting its ability to fulfil its constitutional obligations and political mandate and to perform its functions efficiently and effectively.

Declining dominance of the executive

Contrary to historical tendencies, the national country reports found a decline of executive dominance in Africa due to several factors—including the end of the Cold War, globalisation and constitutional and political demands. Moreover, civil society organisations and the African media have dissented against authoritarianism, the abuse of power and corruption and supported demands for individual freedom, human rights and the right to participate in the development and democratisation processes of their countries.

More checks and balances on the executive required

The executive has undergone major transformation in some countries, including constitutional, legislative and judicial reforms. In addition, the introduction of decentralisation and local government reforms as well as empowering civil society

organisations and the media have introduced genuine and accessible mechanisms for greater participation.

However, results from the survey showed that only in Botswana, The Gambia, Ghana, Malawi, Namibia and South Africa did more than half the experts surveyed say that watchdog organisations enjoy substantial independence from the executive—and of those countries, only in Malawi and Namibia did more than half the experts surveyed say that the organisations were effective.

Effectiveness and independence of the legislature and the judiciary need strengthening

To effectively check and balance the executive, the legislature needs capacity, competence and independence. The survey of experts found that about a third of legislatures were perceived to be largely free from subordination to external agencies in all major areas of legislation. Overall, though, more than half of the legislatures in Africa are under various degrees of subordination to external agencies in all major areas of legislation. In a similar pattern, the experts perceived very few legislatures as being largely or above corruption.

Similarly, the capacity of the judiciary varies widely depending on the levels of competence and the degree of independence from the executive. Despite constitutional guarantees, however, the perception prevalent in most African countries is that the judiciary is only partially independent. The national country reports suggest that while on the whole the performance of the judiciary is improving, its effectiveness in many African countries is still restricted. The judiciaries in Botswana, Namibia and South Africa were recognised by 75% or more of the experts surveyed there as being fully or largely independent from other branches of government.

Nonstate actors becoming more active

Civil society organisations' independence from the state is critical to their ability to operate autonomously, exposing abuse of power and reinforcing some accountability on the government. On the whole the national country reports found that the proliferation of watchdog and advocacy organisations has been effective in protecting citizens' rights.

Yet, their influence on policy formulation and implementation varies according to the laws and practices in a given country. On average, 21% of the experts felt that civil society organisations had a strong or fairly strong influence on government policies and programmes, while 43% deemed it fair, and 36% weak or non-existent.

An independent media contributes to an autonomous and active civil society, while vibrant associations keep media in check as well. Many African governments are increasingly becoming tolerant of criticism. But there are notable exceptions: in Kenya and Swaziland, for instance, 85% of the experts said that the media operate within an environment where freedom of expression is under threat or under state control or where rights are frequently violated.

Institutional effectiveness and accountability of the executive

The executive is at the nerve centre of service delivery to the people and the major agency through which the tangible dividends of democracy are actualised. But its performance depends largely on its institutional capacity, effectiveness and acculturation to the values of public accountability.

Institutional capacity remains weak

Institutional capacity depends on the quality, calibre and legitimacy of the elected executive and the cabinet as well as the character and quality of the bureaucracy. A weak civil service will likely undermine the lofty goals of good political leadership.

In virtually all countries, merit is the stipulated criterion for selection and promotion. Except in a few countries, like Botswana, Ghana and Namibia the perception of experts are that the meritocracy in appointment and promotion is largely compromised. In none of the other countries did more than 50% of the experts surveyed say that merit-based principles were fully applicable in appointments, promotions and career development of the civil service. Furthermore, women are still underrepresented in the public service, especially in the senior cadre of the service. The trend is that women's representation in the public service decreases farther up the public service hierarchy.

From the 1960s through the 1980s remuneration in the public service was relatively good, although it was lower than in the private sector. But recent developments, especially the economic downturn and the implementation of structural adjustment programmes, have had devastating effects on remuneration in government. The financial squeeze has also decreased resources allocated for training programmes for civil service and staffing for training centres. Many African countries have also not been able to provide their civil service with modern facilities, especially information technology and equipment, partly because of resource constraints and lack of strategic planning.

More transparency and accountability needed

In many African countries, either the public service code or the constitution makes specific provision for transparency and accountability. However, there is little openness in much government business, and most people still do not regard the public service as transparent or accountable. Official information is often either not available or not easily accessible to the public. And when information is provided, it is mostly in a technical language incomprehensible to decision makers and the public.

Authoritarian leaders may end up appropriating extensive political power, dominating the bureaucracy and unilaterally determining state policies. Clearly under this system, the government misses the advantages of active exchanges on its policies among actors, especially civil society, which can improve the quality of public decision making and accountability.

Corruption greatly hinders executive effectiveness

Corruption flourishes because most public institutions are weak or not autonomous. Legislative committees that ordinarily should oversee government ministries and state-owned enterprises barely have the professional competence to do so. The audit departments in many African countries are also poorly staffed, lack resources or autonomy or are partners in corruption. Many of the public regulatory institutions and law enforcement agencies are perceived to be very corrupt. For example, the police force in many countries is considered to be the most corrupt by the households surveyed, followed by tax officials and the judiciary.

There are both short-term and longer-term measures that need to be taken to promote transparency and tackle corruption across all levels of society. Granting institutions relative autonomy to free them from undue political interference and improving the salaries of public officials is one immediate option to reduce their vulnerability. The use of information technology in public administration (i.e., e-governance) can also play a major role in reducing the discretion of public officials by helping to condense the number of steps taken in the completion of an administrative or service delivery process while simultaneously enhancing its transparency.

Efficient service delivery as a tool for poverty reduction

The gravity of the situation is reflected in the confidence of the households surveyed on the ability of their government to deal with their concerns. Only about a third of the households surveyed are highly or quite confident that their government will promptly and effectively deal with the problems they face, compared with 38% who were not or rarely confident in the performance of their governments.

The overall picture on access to government services is also not very encouraging. The average share of experts surveyed across all project countries who said that citizens have ready or mostly ready access to services is about 30%. Additionally, the majority of experts in most of the project countries found that government services do not fully or adequately address the specific needs of women.

However, on average, 42% of the households surveyed described government health services as very good or good. Related to education, some 50% of the households surveyed said that the adequacy of buildings was very good or good, 55% said that trained teachers were very good or good, and 37% said that materials were very good or good.

On access to basic health services, in terms of distance to the nearest health centre or public clinic, many countries scored favorably. Virtually all countries in the household survey scored highly in terms of access of children to primary schools, with an average rating above 70%. But there is considerable variation across countries in terms of access to secondary schools.

On the cost of education, there is considerable regional variation, but the majority of households surveyed said that they have never been denied access to school due to inability to pay. On the affordability of other public services, a large share of the households surveyed said that services are fairly or very costly.

Related to economic inputs, in the 19 countries surveyed on agricultural issues, 51% of the household respondents said that they lacked access to agricultural extension services, 61% lacked government credit for agriculture, and 57% lacked access to irrigation facilities. Lastly, on access to gainful employment, virtually all the countries performed badly: an average of 68% said that they do not have opportunities.

Stronger response to the HIV/AIDS pandemic needed

Across the continent HIV/AIDS is posing a great challenge to governance in terms of human capacity losses, human rights and human development and security. It has created serious governance challenges for African countries, including the weakening of African states' institutional capacity as workforces are devastated; decline in economic growth as human capital and productivity diminish; the diversion of scarce resources to treat HIV/AIDS from the other basic needs of society; the deepening of the social crisis caused by the dislocation of families and threats to national security due to high rates of infection for military personnel.

African countries will have to make difficult and strategic political choices on how to tackle HIV/AIDS in a less costly but more efficient manner. Increasing public spending on treatment and containment, decentralising problem solving to the grassroots and community levels, involving a broad group of stakeholders (civil society, the private sector, the media, traditional rulers and the international community) in the AIDS reduction efforts, providing adequate information and education on the problem and a sustained political will to address the issue are all necessary steps.

Human rights and rule of law

Respect for human rights and rule of law is among the most important indicators of good governance. While African countries have overwhelmingly subscribed to most international and regional human rights norms and standards, ratified numerous treaties and enshrined these principles in their constitutions and national legislations, a significant gap remains in their realisation. In contrast with the growing body of human rights instruments, regional mechanisms for promoting and enforcing human rights remain weak.

The state of human rights in Africa: principles versus reality

At the political level significant progress has been made on human rights issues. The principle of rule of law is generally respected in most countries along with a fair level of commitment to the respect for human rights. It is also very rare to hear any challenge to the relevance of human rights by African leaders. On average across project countries, nearly 30% of the experts said the government fully or mostly respects the law, while 46% reported it sometimes does and some 24% indicated it rarely or never does.

In many African countries there is very low level of transparency with regard to the violations of human rights that take place in prisons. The lack of observance of human rights by security forces is generally attributed to poor training and exposure to both domestic and international human rights norms. In fact, about a third of the

experts across project countries reported that they did not view the police as being adequately trained, while only 26% felt the force was.

While in many African countries constitutional provisions for the protection of political and civil rights and liberties are adequate, governments regularly violate them, especially in difficult political situations. For instance, harassment of journalists intensifies as elections draw near and supporters of opposition candidates are often threatened and harassed.

Progress has been slow on economic, social and cultural rights. In terms of social rights, though, the rights of marginalised groups, such as children and disabled people, are increasingly being recognised and provided for. However, in the areas of economic and material social rights, many African countries have made the right to employment, education, health services, housing, food and the like non-justiciable—or rights the government will strive to achieve based on resource availability.

In virtually every African country access to justice in a quick and efficient manner can be problematic. The court system is slow and expensive, and access to it is often determined by the social status of the person involved. Across project countries, 58% of the experts reported that the courts can always, usually or sometimes be accessed while 42% said rarely or never. There are differences among countries on how social status affects access to and dispensation of justice. In only 11 of 27 countries did more than 50% of the experts surveyed say that citizens can always or generally obtain full access to justice irrespective of their economic or social status.

The level of discrimination against women in African countries remains disappointingly high. And violations of women's rights are rarely acted upon, if they are reported at all. In many African countries women are victims of rape, domestic violence and other forms of human rights abuses. Generally, women who are discriminated against based on their gender can initiate a court action or a complaint before a human rights commission.

Institutional mechanisms for safeguarding and enforcing human rights poorly institutionalised

Traditionally, the judiciary, in view of the constitution and the nature of its functions, is the main government agency called upon to protect human rights and advance rule of law, accountability and transparency in government. But many jurisdictions have realised that protecting human rights and promoting accountability in governance and rule of law cannot be left to the courts alone but must also involve other watchdog organisations and institutions designed specifically to provide such protection.
A central factor in the effective operation of these institutions is their independence from other branches of government, especially the executive. For instance, an average of 37% of the experts surveyed across all the project countries said that watchdog institutions are fairly or substantially controlled by the executive branch of government. In addition, more than 30% of the experts indicated that these groups always or usually monitor and report human rights violations by the police and prisons, compared with 15% who said that government agencies do.

Africa has seen a rapid increase in the establishment of human rights commissions, including gender commissions. Nearly 30 African countries have made provisions in their laws to establish a national human rights commission of some sort. However, an average of 55% of experts indicated that human rights violations are rarely or never reported to the public by government organs, while only about 18% said that violations are always or usually reported.

Many country reports found that judicial capacity to protect human rights is still very weak as well. In many African countries the judicial system is slow and expensive, and it lacks basic infrastructure and operational materials. Although some 75% of the experts surveyed across all the project countries said that judges are sometimes or usually appointed and promoted on merit, the judicial system is still widely regarded as corrupt.

Institutional capacity building for good governance

Capacity development is an ongoing process, requiring the unleashing of a continuous supply of the appropriate legal, institutional, human and material resources and a conducive operational environment. In essence capacity building is about people—who have to be trained, adequately equipped, sufficiently remunerated and appropriately disciplined in the efficient use and management of resources.

Capacity gaps in state actors impeding good performance

In general, many African legislators lack the knowledge, information, freedom and independence and resources to perform their constitutionally mandated functions efficiently and effectively. Lack of adequately stocked libraries, electronic equipment and documentation facilities are common. The level of education of legislators in many African countries is generally low in relation to the functions they are expected to perform.

Lack of regular and reliable consultation with civil society, the private sector, universities, think tanks or the rural community—all useful sources of information and knowledge for policy purposes or legislation—has become a serious impediment to the effectiveness of most legislatures in Africa. Furthermore, opposition parties in many African parliaments are very weak and could hardly engage the government in serious debates on major governance issues and policy options.

In many countries the judicial system as a whole is poorly funded. The judiciary too often lacks a qualified and professional workforce. The overall consequences of these deficiencies restrict the access to justice for many poor and marginalised people.

Poor service delivery is due mainly to the lack of an adequately skilled workforce. Poor training facilities, the absence of a strategically oriented training policy for the civil service and limited budgets have impeded the advancement and development of the skills of civil servants in many countries. Several country reports also made a direct link between poor education and low wages and the rising culture of corruption and embezzlement of public funds.

Furthermore, the ability of local authorities to make autonomous decisions on various aspects of their programmes and developments has been limited. Local authorities rely heavily on funds from the central government. They also tend to lack financial management and organisational skills. These deficiencies have had an obvious deleterious impact on the capacity of governance institutions and on the morale of local government officials. Households were divided over whether local governments responded to complaints they had. Some 58% said that complaints were always, usually or sometimes dealt with satisfactorily, while 41% indicated that they rarely or never were.

Capacity gaps in nonstate actors limiting effectiveness

In most countries civil society organisations suffer from internal weaknesses, lack of managerial skills and training, very limited financial resources and a constraining external environment. In the same vein, many political parties in Africa have little capability to effectively articulate issues, engage in debate, promote their political principles and visions of society or defend the interests and rights of their supporters. Most political parties in Africa are not professionally organised and do not have functional internal democratic structures.

On the whole African governments have improved the environment for the private sector, with close to half of the experts surveyed across all the project countries saying that the effective operation and involvement of the private sector is always or often encouraged by the government, and another third saying that this was at least sometimes the case. Unpredictable regulatory enforcement, unstable policy frameworks and weak public regulatory capacity are negatively affecting the growth and development of the private sector.

Approaches to capacity development

The legislature. Parliament needs the power to control and organise its own agenda independent of the executive or in consultation with it as an equal partner. An autonomous parliamentary service commission is needed with the power and financial resources to recruit, hire, fire and discipline staff and with the infrastructure and facilities to train and upgrade staff. The legislature must also develop rules and ethical codes and standards of conduct for its members and ensure that they are effective.

Continuous skills upgrading on parliamentary procedures and constituent relations is needed for members of parliament. It is thus imperative that they be reoriented and empowered to improve their interaction with civil society and their various constituencies and that parliaments revise the public consultation mechanism in their lawmaking processes. Legislative proceedings and major reports should be translated into local languages and distributed to schools and civil society organisations, so that the citizens are sufficiently informed of legislative activities.

The judiciary and law enforcement organs. A separate Judicial Service Commission should handle the appointment and promotion of judges, while the remuneration of judges should be determined by the parliament and charged to a consolidated fund. The number of judicial staff should be increased, and continuous professional training should be offered to those involved in case tracking. Operations

must be streamlined and facilities enhanced, including modernisation of information technology, especially an efficient and effective case management system.

The state's capacity to provide security, protect individual rights of residents in all parts of the country and ensure adequate safeguard of property rights must be improved. Police personnel must be trained in community relations in order to produce a people-friendly service. Governments should also develop a time-bound national action plan to promote and protect human rights, eliminate the culture of impunity by ensuring that all human rights violators are sanctioned irrespective of their standing in society.

The executive. To restore professionalism, governments should take appropriate measures to promote a merit system in appointments and promotions and stop unethical practices, biases, nepotism and other abuses of office. Governments should also move swiftly to improve public servants' terms and conditions of service. Civil service reforms should aim to improve human resource capabilities and management, remuneration, incentives and ethics. Moreover, as a targeted strategy, decentralisation and devolution of authority and responsibilities to grassroots levels, through the establishment of local structures is needed.

Public accounts should be made more easily accessible to the citizenry. An independent and sufficiently resourced anti-corruption commission should be established with powers to investigate and prosecute public officials, civil servants and citizens accused of misuse of public office or financial malfeasance. Other public watchdog offices, such as the Auditor General, Ombudsman and the like, must be appropriately resourced and equipped in order to function efficiently and effectively.

Nonstate actors. It is necessary to adopt a concerted set of measures that build the capacities of nonstate actors—like the media, universities and institutes of research, public policy and higher learning—because they will help promote good governance, democracy and the rule of law. They necessitate training and resources to build their management capacity for fundraising and resource mobilisation, strategic planning, leadership development, policy research and advocacy, project and programme design and monitoring, gender analysis and media and communication, among others. Governments should fund and promote such training programmes or provide tax incentives to groups conducting such training as well as programmes of civic education.

To stimulate demand-driven creation and stakeholder control of nongovernmental and community-based organisations to reduce their dependency on external funding and influence, governments should provide accountable seed-funding. Civic organisations also need to establish their own internal codes of conduct to ensure good corporate and democratic governance, accountability, and transparency in the management of their affairs and resources. Nongovernmental organisations should also be required to publish their audited accounts annually, with sources of funding and activities undertaken.

The registration of political parties must be simplified and regularised, and the rules and regulations governing them must be standardised to make their application and

reinforcement more transparent. Professionalism is needed in party organisation and management, including the creation of research units and the promotion of a culture of information and knowledge-based policies.

Governments should also provide the basic infrastructure for optimising private sector performance. This entails the supply of dependable, uninterrupted electricity and water, good roads, cost-effective and efficient telecommunications and security. Supportive policies for the effective operation of the sector include creating an appropriate policy and regulatory environment, granting credit facilities with low interest rates for small informal sector entrepreneurs, providing easy access to land and other productive facilities for capacity enhancement and allowing property to be used as collateral for credit purposes.

Political governance

1

Democratic politics and practises have taken a significant leap in Africa in the last two decades. Competitive multiparty democracy has been enthroned in many African countries. The political space has been gradually liberalised with political parties of various shades and colours. And civil society organisations have received a new lease on life, contributing to the development process and influencing policies in various aspects of public life. Ethnoregional diversities have also been given political expression and accommodation. Marginalised groups of women, youth, children and the disabled are progressively getting their views on the policy agenda. And electoral institutions are gaining more credibility and legitimacy with the move to relatively free and fair elections in many countries. The trend: a new social pact, with the institutions of the state and the processes of governance is gradually being reconstructed to promote democracy and good governance.

At the continental level the African Union and the New Partnership for Africa's Development (NEPAD) are defining new parameters for governance and providing benchmarks for a new governance culture in Africa. Emerging structures and processes such as the African Peer Review Mechanism, if properly designed and implemented, can improve governance in many African countries. The African Union's Commission on Peace, Security and Stability may also promote peace essential to political and economic development in Africa.

The African Union and NEPAD are defining new parameters for governance and providing benchmarks for a new governance culture in Africa

But despite these advances, challenges to political governance remain in many African countries. The democratic process is still fragile, tenuous and filled with trepidation. The emerging structures of governance—political parties, civil society organisations, elected institutions of the legislature and the executive—remain weak and barely institutionalised. These institutions must be gradually nurtured as Africa strives to achieve economic progress and political development in the 21st century.

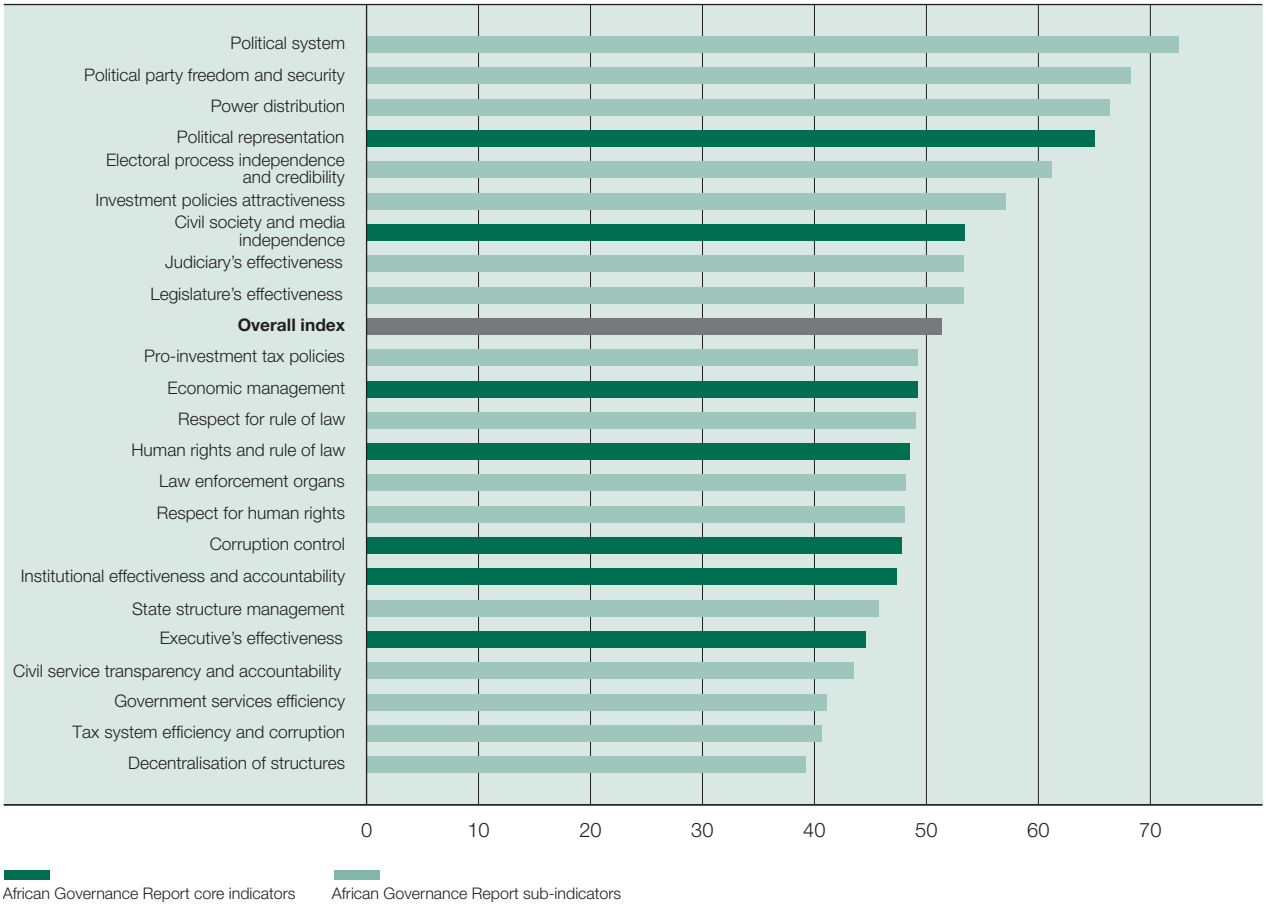
Democratic regime and structure of political representation

The logic and practise of democratic pluralism as opposed to authoritarian monolithism is gradually becoming the norm in Africa. This is evident from the African Governance Report (AGR). Political representation, openness of the political system, political party freedom and security, power distribution and independence of the electoral process have the highest average scores in the study. Civil society and media independence and credibility as well as judicial and legislative effectiveness

also have the higher than average scores—above 53%. However, decentralisation, a sub-indicator of the executive's effectiveness, has the lowest score (figure 1.1).

The scope of political representation has also widened through various democratic structures that represent the people. The legislative and executive branches of government in many African countries are chosen through competitive elections, as are the various tiers of government, especially in federal systems. This is also reflected

Figure 1.1 The African Governance Report core indicators and sub-indicators[a]
Scores, average across project countries (%)



Notes:
a. AGR core indicators and sub-indicators

Political representation: political system, political party freedom and security, power distribution and electoral process independence and credibility
Civil society and media independence
Economic management: investment policies attractiveness, pro-investment tax policies and tax system efficiency and corruption
Human rights and rule of law: respect for the rule of law, law enforcement organs and respect for human rights
Corruption control
Institutional effectiveness and accountability: judiciary's effectiveness and legislature's effectiveness
Executive's effectiveness: state structure management, civil service transparency and accountability, government services efficiency and decentralisation of structures

Also refer to annex 2 for further explanation on methodology

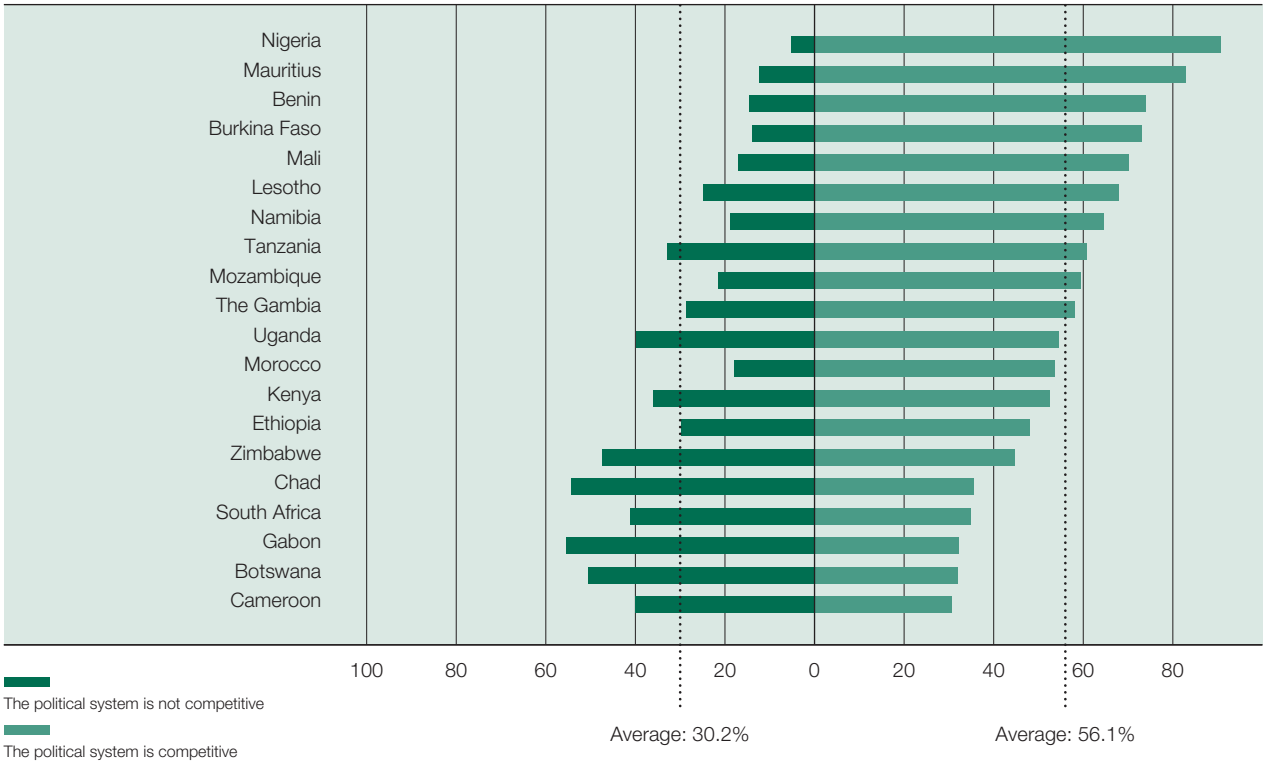
Source: ECA governance survey of experts

in the opinion of the households surveyed for the AGR project: an average of 56.1% responded that the political system was competitive compared with 30.2% who responded that it was not competitive and 13.8% who did not respond. Specifically, more than 60% of households surveyed in Nigeria, Mauritius, Benin, Burkina Faso, Mali, Lesotho, Tanzania, Gambia and Mozambique considered their political system competitive, while fewer than 40% in Chad, South Africa, Gabon, Botswana and Cameroon did (figure 1.2).

Regime types and structures of political representation provide the formal institutional framework and mechanisms for democratic governance. These have four components:

- Adherence to constitutionalism.
- Evolution toward multiparty democracy.
- Leadership systems: presidential, parliamentary or hybrid.
- Governmental structures: federal, unitary or confederal.

Figure 1.2 Household opinion on the competitiveness of the political system
Share of households surveyed, by country (%)



Source: ECA governance survey of households

Adherence to constitutionalism

A remarkable development in Africa is that most countries have embarked on constitutional reviews to promote a culture of adherence to rule of law, due process and political accountability. Ethiopia, South Africa and Uganda undertook an elaborate process of "bottom-up" constitution making through which "popular or people's" constitutions were created[1]. The process was inclusive, transparent and democratic—with all segments of the population involved and able to make their demands known (Ihonvbere 2000; Hyden and Venter 2001; Oloka-Oyango 2001).

A political framework founded on a constitutional order that is generally agreed to by society will certainly claim legitimacy and protect the interests of the people

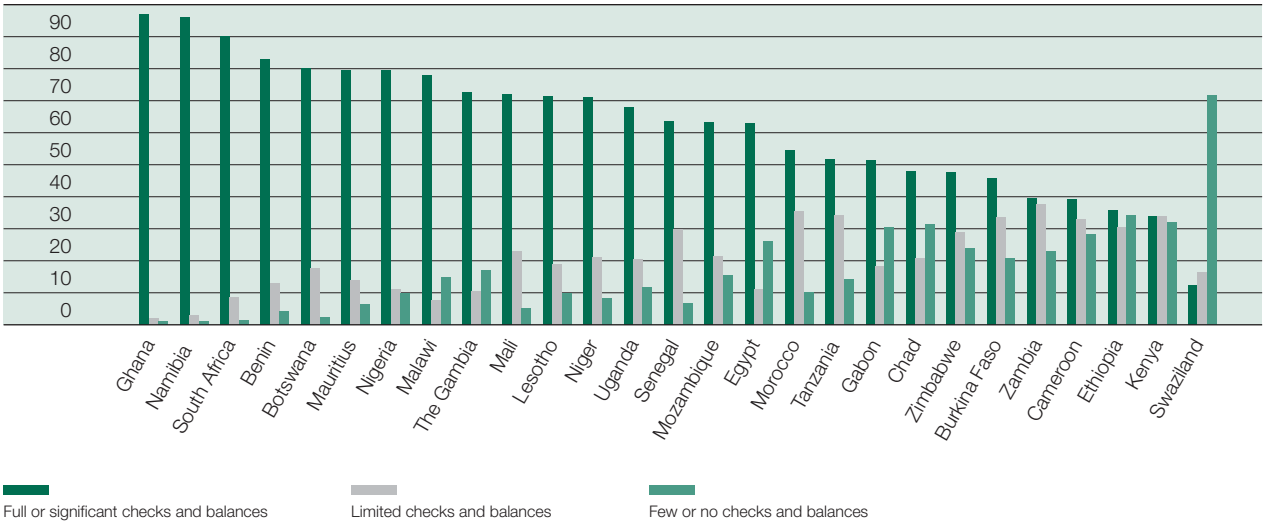
Other countries have either already amended their constitutions to reflect the new reality or are in the process of doing so. Tanzania has amended its constitution six times since the dawn of its multiparty democracy. The Gambia revised its constitution in 1997. And Nigeria is engaging civil society in a review of the constitution. A coalition of more than 90 civil society organisations called the Citizens Forum for Constitutional Reform was established in 2001 to make inputs. A political framework founded on a constitutional order that is generally agreed to by society will certainly claim legitimacy and protect the interests of the people. Except in Swaziland, the national experts who said that the constitution provided full or significant checks and balances between the branches of government outnumbered those who said that it provided for only limited, few or no checks and balances (figure 1.3).

Evolution toward multiparty democracy

The culture of political authoritarianism manifested in military dictatorships and one-party systems dominant in many African countries has in the last two decades gradually given way to competitive party democratic systems. Many African

Figure 1.3 Expert opinion on checks and balances in national constitutions

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

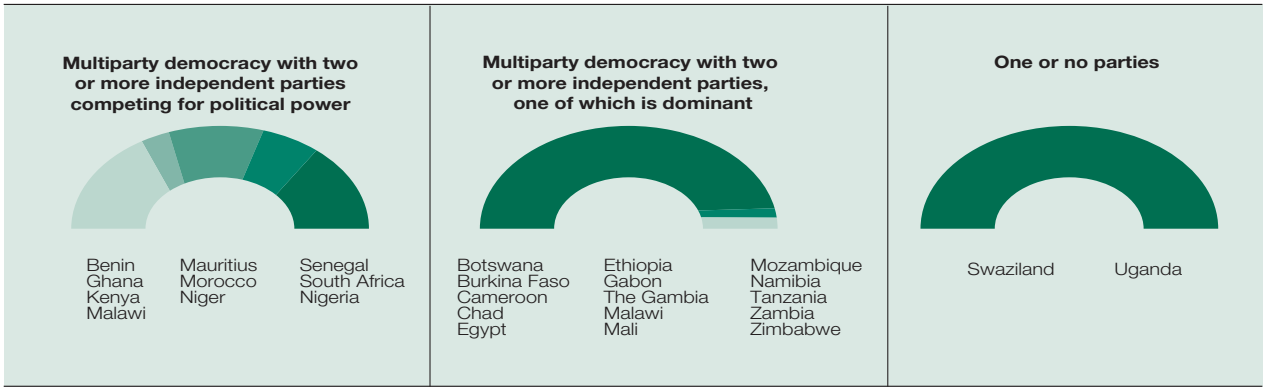
countries now have a multiparty democracy with varying degrees of stability, acceptance and legitimacy. There are three patterns of party democracy being practised (figure 1.4): countries with two or more competing and relatively strong political parties (for example, Ghana, Kenya, Nigeria, Senegal and South Africa); countries with two or more parties, one of which is dominant (for example, Ethiopia, Namibia and Tanzania); and countries with one or no parties (for example, Swaziland and Uganda).

The possibility of alternating political power is higher in countries with two or more parties of relative strength competing in the electoral process. Countries with a strong dominant party and weak opposition have less possibility of alternating power among parties. Countries with one or no parties have almost no possibility of alternating power except when the leader dies or when intense internal pressure or rupture forces the leader to relinquish political power.

The possibility of alternating political power is higher in countries with two or more parties of relative strength competing in the electoral process

Uganda presents a real challenge for political reform in Africa. It has a no-party system, dubbed the "Movement system". President Yoweri Moseveni created the system after assuming power in 1986, and it was recognised in the constitution in 1995. Under the system political parties are not allowed to operate; instead, the competition for political office takes place within the Movement system. By law all Ugandans are members of the Movement system, which has various layers and organs of political representation, including a parliament. The government of President Moseveni considers the Movement system all-inclusive, non-sectarian and designed to engender popular democracy devoid of the acrimony, dangerous divisions and bitterness that characterised the country's experience with multiparty democracy. But the system is generally regarded as a one-party system. The Ugandan constitution provides for the adoption of a party system when the parliament makes a law to that effect. A referendum was held on June 29, 2000

Figure 1.4 Democratic pluralism based on party regime



Source: National country reports

to determine whether Ugandans wanted to continue with the Movement system or adopt a multiparty democracy. The referendum, largely boycotted by political organisations, endorsed the continuation of the Movement system.

Other African countries are in different stages of democratic practise. Some have held only one multiparty democratic election, and others have passed the "second election" test, with two consecutive multiparty democratic elections. Countries in the second group can be said to have moved into the realm of democratic consolidation, where democracy constitutes the "only game in town" and the legitimate framework for seeking and exercising political power (Diamond 1999). In Ghana, Kenya, Senegal and Zambia incumbent regimes have been defeated in multiparty elections, a sign of political consolidation. Leadership succession and change through the electoral process, especially on a multiparty basis, are significant steps towards democratic renewal and a new culture of governance in Africa.

In Ghana, Kenya, Senegal and Zambia incumbent regimes have been defeated in multiparty elections, a sign of political consolidation

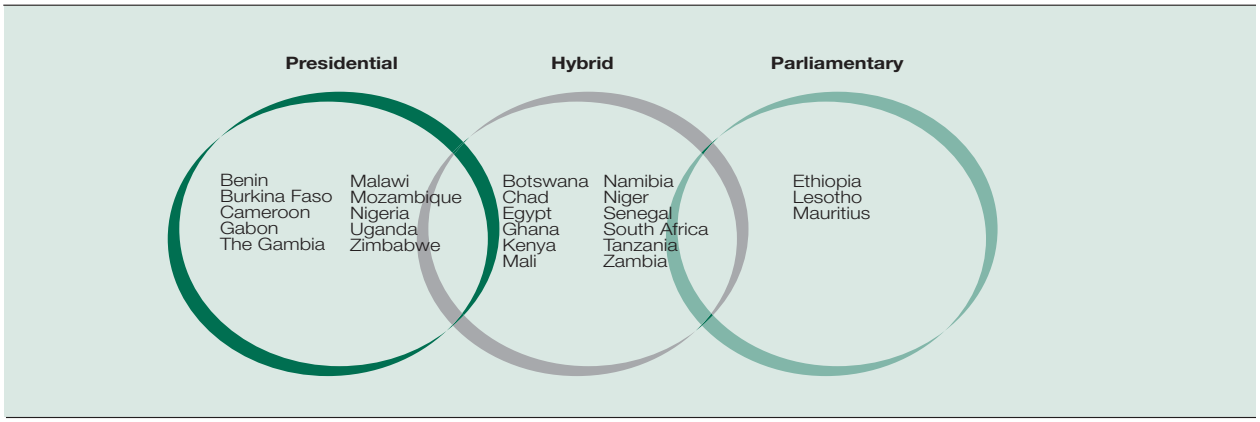
Leadership systems: presidential, parliamentary or hybrid

The structure of government as a mechanism of political representation determines how the executive is constituted, how the legislature is composed and the scope of separation of powers. In Africa there are three types of governmental structure: presidential, parliamentary and hybrid (figure 1.5). The hybrid system is the most common.

The presidential system has a single executive, the president, who is usually directly elected by the people and who, as the fulcrum of power, appoints a cabinet. The principle of separation of powers is usually enunciated in a presidential system. Benin, Burkina Faso, Cameroon, Gabon, The Gambia, Malawi, Mozambique, Nigeria, Uganda and Zimbabwe have the presidential system.

The hallmark of the parliamentary system is a fusion of legislative and executive powers. The president has mostly ceremonial functions as head of state. The

Figure 1.5 Structure of government



Source: National country reports

president usually appoints the prime minister from the party with the most seats in parliament. The prime minister is the head of the government and oversees the executive branch. And with the advice of the prime minister, the president appoints the deputy prime minister and other cabinet members, who are responsible to parliament, as well as the leader of the opposition, the person most capable of obtaining majority support of the opposition members in parliament. Ethiopia, Lesotho and Mauritius operate under a parliamentary system of government.

In Mauritius the president is chosen by the parliament, not directly by the people. Members of parliament are directly elected and serve for a maximum of five years. Ethiopia has a similar system, with the leader of the majority party in the House of People's Representatives (HPR) controlling the federal government. The prime minister, who possesses the highest executive powers of the federal government, is elected from among the members of the HPR and appoints a cabinet, subject to the approval of the HPR. The president, the head of state and largely a ceremonial position, is elected by a two-thirds majority vote of the joint session of the House of People's Representatives and House of Federation. The president's term lasts six years and is renewable once. There is no limit to the number of terms the prime minister can serve.

The structure of government as a mechanism of political representation determines how the executive is constituted, how the legislature is composed and the scope of separation of powers

Many African countries have a hybrid governmental structure that combines elements of the parliamentary and presidential systems. These countries include Botswana, Chad, Egypt, Ghana, Kenya, Mali, Namibia, Niger, Senegal, South Africa, Tanzania and Zambia. In Ghana, Kenya and Namibia the president, who is directly elected, is the locus of executive power and appoints ministers mainly from parliament. In Tanzania the president, who is directly elected, is the head of state and government, although there is a prime minister appointed by the president from parliament. In Senegal the president is directly elected for a five-year term and appoints the prime minister and the cabinet. The president also has the power to dismiss the prime minister and the cabinet.

Mali has what has been dubbed a "semi-presidential" system in which the president is directly elected for a five-year term, renewable once. The president appoints the prime minister and the cabinet and has other powers that exceed those of the head of state in parliamentary systems. For instance, the president has the power to dissolve the National Assembly and to ask for the resignation of the prime minister and the cabinet—in other words, to dissolve the government.

The nature of parliament in these hybrid systems, how they are composed and their tenure also differ. At the centre some countries have a bicameral legislature; others a unicameral one. In some countries all members of the legislature are directly elected; in others not all are. Some are nominated by the president to represent special interests. For example, the Tanzania Union Parliament has 293 seats, 231 of them for constituency members, 5 for members nominated by the Zanzibar House of Representatives, 47 reserved for women, 9 for members appointed by the president and 1 for the attorney general of the Union. In Kenya the parliament has 210 elected members and 12 members nominated by the president, for a total of 222 members.

The nature of the governmental structure may determine how separate the legislature and executive are and the nature of their working relationship. In practise, their

relationship depends largely on the informal association of the political elite in each branch. This is a political parties system that allows for a coalition government so that the interest of different social groups are accommodated to promote national unity. This relationship differs by country and ranges from co-operation and subservience to distrust and antagonism. Democracy can only thrive in an atmosphere of moderation, trust, constructive dissent and disagreement and consensus among the organs of government, especially the legislature and the executive.

Leadership succession and change through the electoral process are significant steps towards democratic renewal and a new culture of governance in Africa

In Ethiopia the ruling party, Ethiopia's People's Revolutionary Democratic Front, controls the parliament. The party assumed power through armed struggle and imposes a lot of discipline on its elected members, bordering on subordination of the parliament by the executive. The actions of the executive are rarely challenged by the parliament, and bills from the executive are usually passed with little scrutiny or debate. The capacity of the legislature to check the excesses of the executive is really undermined. In Uganda the no-party system really circumscribes the power of the legislature as the Movement system controls both the executive and the parliament. This does not augur well for a thriving democracy. However, in South Africa a critical, co-operative relationship exists between the parliament and the executive despite the African National Congress' majority control of parliament.

Governmental structures: federal, unitary or confederal

The nature of the institutional arrangement determines the formal structure of political decentralisation and the tiers of government that exist in a country. Some African countries, such as Ethiopia and Nigeria, have a federal system; others, such as Ghana and Kenya, have unitary systems. Still others, such as South Africa, have quasi-federal systems.

In a federal system of government there are at least two independent lines of authority or tiers of government to be co-ordinated. These levels have constitutionally defined powers and functions, and they serve as a basis of political representation by having elected authorities. In unitary systems the governments of constituent units ultimately derive their authority from the central government, whereas in the federal system each level of government derives its authority from the constitution. In many unitary systems the centre devolves power to the subnational authorities. The federal system usually has more levels of political representation than the unitary system, and political power is expected to be more dispersed in a federal system. However, there is sometimes a gap between structure or theory and practise. Some federal systems are highly centralised, with political decentralisation only in name, not in practise, and political power and resources highly concentrated in the centre, as in Ethiopia and Nigeria. And some unitary systems have more levels of political decentralisation, as in Mali.

The indicator for decentralisation was the lowest of all the governance indicators compiled for the AGR (as per figure 1.1). The survey of experts indicated that in only a few countries (Namibia, Ghana, Botswana, Mauritius, South Africa, Tanzania, Zimbabwe, Egypt, and The Gambia) did local governments and administrations largely have the capacity to effectively manage their decentralised responsibilities (figure 1.6).

Unitary systems often have fewer layers of government, with the central authority able to override the subnational units. In Ghana, Kenya and Malawi, for instance, after the parliament and the executive the next layer of government with elected representatives is the local authorities—there are no state or regional governments. In Ghana the District Assembly is the lowest unit of representative government. Although regional administrations exist, they are not elected bodies but delegated field officials of the central authority. In Kenya the local authorities are at various levels: urban, town, municipal, city and county councils. Most of the local authorities are directly elected, with a small number appointed by the political parties represented in the local authorities.

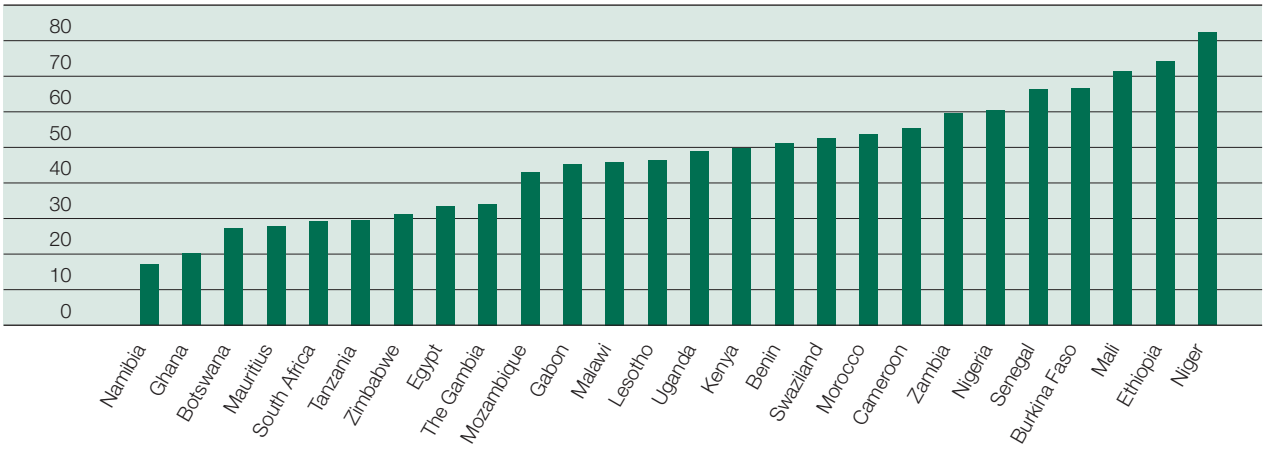
South Africa, with its quasi-federal system, has all the semblance of a federal polity. There are three layers of government, which the 1996 South African constitution affirms to be "distinctive, interdependent and interrelated" (chapter 3, section 40). These tiers of government also have a democratic character. The national and provincial governments have executive and legislative arms, while the executive and legislative powers of the local governments are vested in the municipal councils. Just like Nigeria's federal system, the existence of local government is enshrined in and protected by the South African constitution, which requires that the local government be democratic and accountable and that it promote social and economic development at the local level.

The survey of experts indicated that in only a few countries did local governments and administrations largely have the capacity to effectively manage their decentralised responsibilities

Despite the weak capacity of local governments to manage local affairs, they are still considered to be closer to the people because they look after their interests better than the regional and national governments. Asked whether local governments are consulting local associations in decision making, an average of 45.6%

Figure 1.6 Expert opinion that local government administrations have no or only poor capacity to manage their decentralised responsibilities

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

of households surveyed across project countries said yes, compared with 31.2% who said no and 23.1% who did not know. This compares well with the central government. Only 31% of households surveyed thought that it consulted local associations, while 39.9% did not and 29% did not know. Also, an average of 35% of households surveyed believed that local authorities cater for their interests, while less than 30% said so about regional authorities.

Social inclusiveness in political representation

Deliberate efforts have thus been made through constitutional provisions, conventions or informal arrangement to reflect this diversity in the organs of government, especially in the executive and legislature. The social cleavages prevalent in many African countries occur along ethnic, regional, religious, gender and other marginalised social group lines. However, the ethnic, regional and religious diversities are the most volatile and gain the most political prominence.

With women constituting more than half the continent's population, democracy would be meaningless if they were not adequately represented and politically empowered

Many countries are also striving to achieve gender representation. With women constituting more than half the continent's population, democracy would be meaningless if they were not adequately represented and politically empowered. Most African countries are not indifferent to the sociological character of their society, hence deliberate effort is made to ensure inclusiveness in the organs of political representation, including the executive and legislature, and in the various tiers of government. In addition, such state organs as the civil service, state-owned enterprises and government agencies are made to reflect the geoethnic profile of the country. The process of democratisation has enhanced this process, as the issues of identity, diversity, group rights and social justice have gained currency (box 1.1).

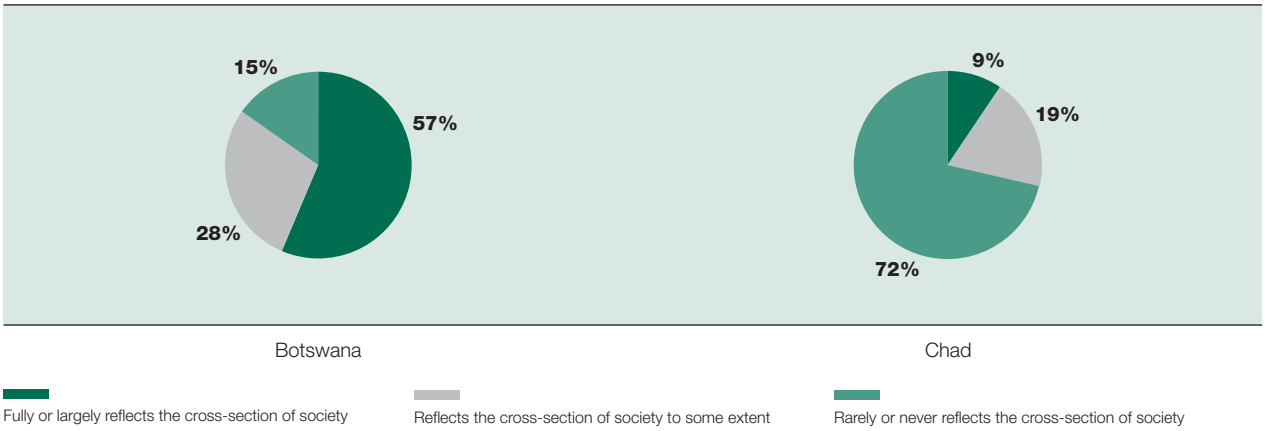
At the same time, the AGR project revealed large discrepancies among African countries in the extent to which the composition of senior public servants reflect society (figure 1.7). In Botswana 57% of the experts surveyed said that the senior cadre of the public service fully or largely reflects the cross-section of the country, compared with Chad, where only 9% said so. On average across project countries, 30.2% of experts said that the composition of public servants fully or largely reflects the cross section of society, 33.4% said it did to some extent and 36.2% said it never did (see also chapter 5).

Box 1.1 Ethnoregional diversity and rights in Ethiopia's federal system

Ethiopia's constitution has an important provision on the right to self-determination for federating nationalities. Article 39 states that "Every nation, nationality and people shall have the unrestricted right to self determination up to secession". The same article also grants nations, nationalities or peoples the right to speak, write, promote and develop their own languages. These provisions allow dialogue over the choice of arms by aggrieved groups and nationalities and empowers groups to settle political disputes amicably even up to the point of self-determination rather than the use of violence and anarchy.

Source: Ethiopia country report

Figure 1.7 Expert opinion on the composition of senior public servants in Botswana and Chad
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Regional, ethnic, religious and racial representation

The obvious neglect of meaningful social composition of state institutions by previous political regimes, especially authoritarian ones, has imposed heavy political and developmental costs on the continent. It is the main cause of intergroup conflicts and tension that are ravaging some African countries.

The obvious neglect of meaningful social composition of state institutions by previous political regimes, especially authoritarian ones, has imposed heavy political and developmental costs on the continent

Most African countries seek to ensure that the executive and legislative arms of government reflect the regional, ethnic, racial and religious profile of society. The exclusion of any group usually precipitates cries of marginalisation, oppression and domination, which often lead to conflict. Countries make different elite associational arrangements to accommodate social diversities in the political system.

South Africa has made a conscious effort to include all racial and ethnic groups in the country's cabinet, including blacks, whites and coloureds. However, because of the historic injustice and deprivation suffered by some groups (especially blacks) under apartheid, there is an affirmative action policy in favour of those groups that has resulted in their greater inclusion in state appointments, including the cabinet. In Tanzania, where there is a Union government of the mainland and Zanzibar, when the president of the Union Republic is from one part of the Union, the Prime Minister must be from the other part.

Nigeria's constitution has what is referred to as the "federal character" principle in order to account for the country's diversity in state appointments. This principle constitutes an ethnic arithmetic for the sharing of public goods. All parts of the country must be represented in the federal cabinet and other federal establishments, including the civil service, state-owned enterprises and government corporations. When choosing the cabinet the president is expected to pick at least one individual for ministerial posts from each of the 36 states of the federation. A Federal

Character Commission ensures fairness, equity and social justice in the representation of states and ethnic groups in federal establishments throughout the country.

In terms of social inclusion in the legislature, the geographical basis of constituency delimitation ensures that all parts of a country are represented in parliament. In countries with a bicameral legislature at the centre—such as Nigeria and South Africa—one house is constituted on the basis of equal representation of states or regions: for example, the Senate in Nigeria and the National Council of Provinces in South Africa. Geographic diversity is also usually reflected in the legislature of subnational units, such as states or provinces, and local government councils.

Inter-religious harmony exists in Malawi, and religious matters have not intruded into the political arena. While Muslims in Malawi constitute only 13% of the population and Christians 86%, a Muslim—Baliki Muluzi, who was popularly elected president—ruled the country. This is a remarkable feat in a continent where religion is an extremely sensitive and volatile political issue that influences the calculus of political power.

While Muslims in Malawi constitute only 13% of the population and Christians 86%, a Muslim—Baliki Muluzi, who was popularly elected president—a remarkable feat in the continent

Although Uganda operates under the no-party Movement system, there is conscious effort to ensure popular participation in the various structures and organs of the movement and the state. In the Ugandan parliament five seats are reserved for special interests, including youth, workers and people with disabilities.

Despite the important strides made by many African countries with respect to social inclusiveness in elected organs of government, there are still problems in two major areas. First is the issue of minorities that exists in different forms in African countries. Minority groups often complain that the majority ethnic groups that control political power treat them unfairly.

In Nigeria oil-producing communities claim to have been marginalised in the allocation of returns from national resources, especially oil revenue, derived from their area. In Ethiopia the Oromo ethnic group's claim of marginalisation, in spite of being the most numerous in the country, is still fuelling an armed insurrection by the Oromo Liberation Movement, allegedly on behalf of the people. In Senegal one of Africa's most stable democracies, there is the problem of the Cassamance. In Southern Africa is the problem of the San, an indigenous people who live in poverty on the edge of society and cultural extinction. The Working Group of Indigenous Minorities in Southern Africa was established in 1996 to provide a platform for the San people in Botswana, Namibia, South Africa, Zambia and Zimbabwe to express their problems, needs and concerns.

The second problem is the class basis of social representation and inclusiveness. In many African countries the urban political elite dominates the political process and claims representation of everybody. The peasants who constitute the bulk of the population in Africa do not have a voice in political issues, nor are they represented in the organs of government. In the same vein, underprivileged groups like youth, the disabled and the unemployed are marginalised in the political process of many countries. The global situation is reflected in the opinion of households surveyed (figure 1.8). An average of 50.6% of households surveyed in a cross-section of project countries said that the government does not treat all citizens fairly regardless

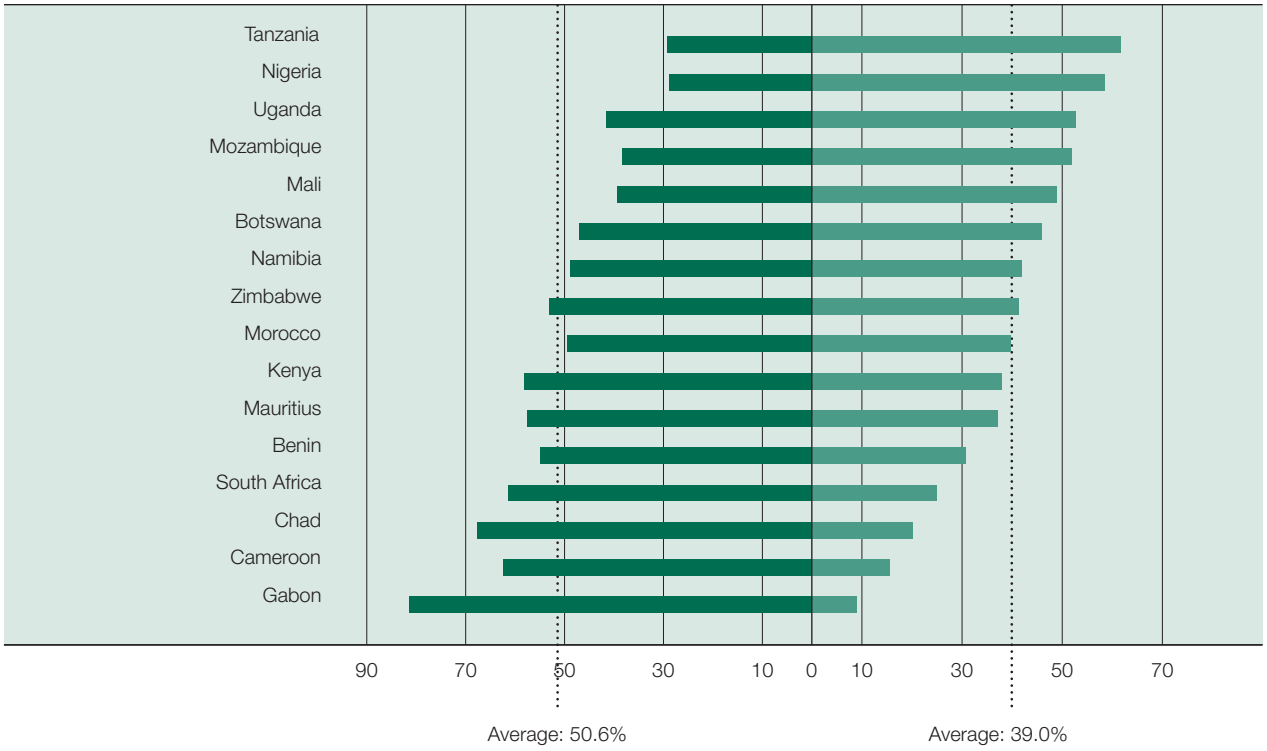
of the regions, community or group they belong to, while only 39% said that the government did treat all citizens fairly.

Gender representation

The issue of gender representation deals with incorporating women into the mainstream of the political process. In many African countries women are a significant share of the population and the workforce, especially in the agricultural sector and the informal economy that is marginalised in the political process despite the fact that they had active roles in the struggle for decolonisation. In terms of women's participation in the political process there are three points to be considered. First are the form and level of representation in the organs of government, including the legislature, executive, judiciary, civil service, state-owned enterprises and government agencies. Second are the existence and autonomy of women's organisations that can push the frontiers of women's demands in the political and social arena. And third is the performance of those organisations in the empowerment of women

Figure 1.8 Household opinion on whether the government treats all citizens fairly regardless to which region, community or group they belong

Share of households surveyed, by country (%)



The government does not treat all citizens fairly regardless of which region, community or group they belong to

The government treats all citizens fairly regardless of which region, community or group they belong to

Source: ECA governance survey of households

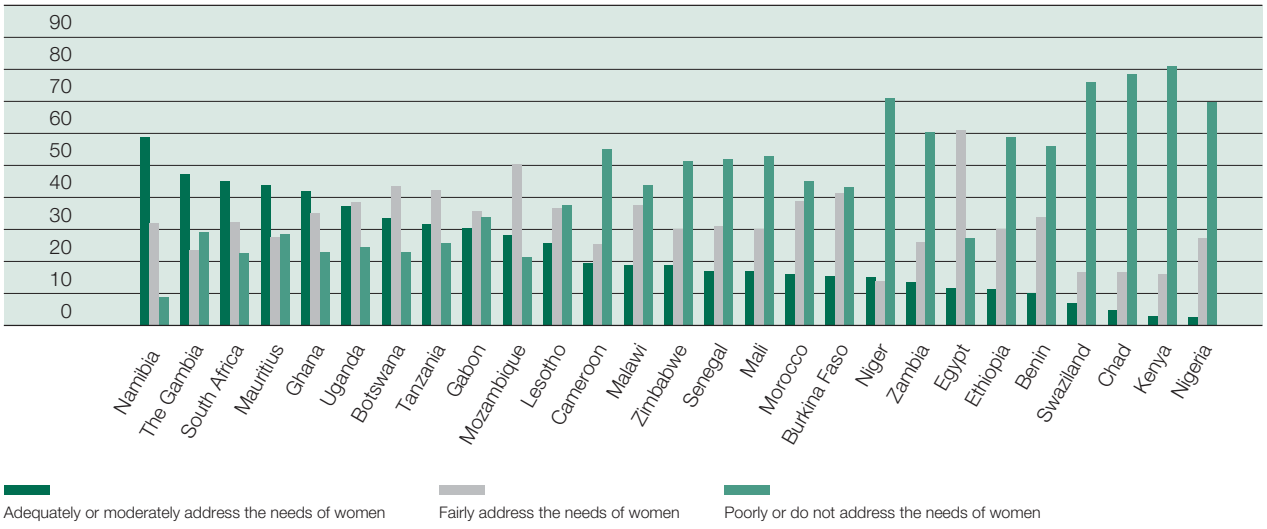
in the social, economic and political processes of society. Experts in most of the project countries seem sceptical about the extent to which government services are responding to women's needs (figure 1.9). Except in a few countries—Namibia, The Gambia, South Africa, Mauritius and Ghana—the perception of experts in all other project countries is that government services do not address the specific needs of women.

Experts in most of the project countries seem sceptical about the extent to which government services are responding to women's needs

Several factors hinder the participation of women in the political process. The patriarchal nature of African societies includes tradition, customs, laws and mores that suppress women in the political process. Women in many African countries are still considered "domestic beings", not for the public sphere or the political arena. This male-dominated culture is gradually receding and women are gaining political voice and accommodation. The process is gradual, slow and sometimes frustrating in many countries, but progress has been made. Some countries have instituted affirmative action policies to redress the historical injustice suffered by women in political governance. In addition, international and continental organisations such as the African Union, the Economic Commission for Africa and the Southern African Development Community have taken up the challenge of promoting womens interests and concerns in Africa.

African countries can be classified into three groups in terms of efforts to create a congenial political environment for women's empowerment (figure 1.10). The first are "high flyers"—countries that have instituted strong affirmative action policies in favour of women and that have established the necessary institutional structures and processes to encourage and stimulate women's political empowerment. South Africa and Uganda are in this league. The second group is countries

Figure 1.9 Expert opinion on how government services address the needs of women
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

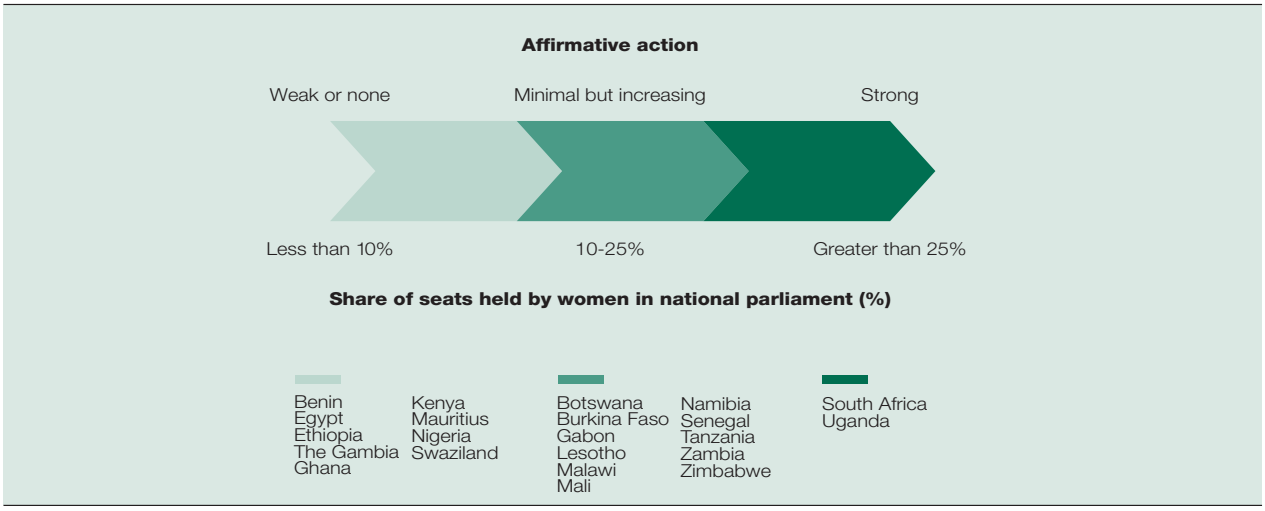
that have low levels of women's participation in the political process, but that have taken moderate steps to improve it. Countries in this category include Malawi, Namibia, Senegal and Tanzania. The third group is countries with a poor record of women's involvement in governance and the political process and very little or grossly inadequate efforts to correct it. Countries in this group include Benin, Egypt, Ghana, Mauritius and Swaziland. More than 25% of seats in parliament belong to women in countries in the first group, 10–25% in countries in the second group and less than 10% in countries in the third group.

Some countries have instituted affirmative action policies to redress the historical injustice suffered by women in political governance

Under the Obote regime women in Uganda were not represented in parliament or local councils. During the despotic reign of Idi Amin women were not only denied inclusion in governance, but women's organisations were banned in 1973. Women's political empowerment in Uganda continued to improve after a new constitution was adopted in 1995. This is due to the government's conscious efforts to incorporate women into the constitution-making process in order to give voice to their demands and defend their interests. The Constituent Assembly, which made the 1995 constitution, had one female representative per district, and two women served on the 21-member Constitutional Commission. The 1995 Ugandan constitution gave a boost to women's political participation in many significant respects.

South Africa has also made important strides in engaging women in the political process. The post-apartheid period has seen significant improvement in the presence and participation of women in South Africa's parliament. The country's ranking jumped from 141 to 7 in the world in terms of women's representation in parliament. The former speaker of South Africa's parliament was a woman, and the country has created multiple structures to promote and monitor gender equality in government

Figure 1.10 Classification of countries based on gender affirmative action policies and levels of political participation by women



Source: National country reports

institutions, including the Office of the Status of Women in the Office of the President, the Commission on Gender Equality, and the parliament's Standing Committee on the Quality of Life and Status of Women. The committee also had an important role in working with civil society to develop the Women's Budget Initiative in 1995, which sought to address the obstacles to equitable socioeconomic development in South Africa, including the poverty and gender link, the policy and budget link and the development of budgetary and advocacy skills.

In South Africa the issue of gender equity is taken seriously in the composition of the executive and legislature as well. In the executive women are in charge of the Ministries of Foreign Affairs, Land Affairs, Health and Minerals and Energy. Of about 350 members in the National Assembly, 137 are women. There are 9 chairpersons of committees, 15 whips and 2 presiding officers who are women. In the National Council of Provinces there are 18 female representatives, and in the provincial cabinets 9 ministers and 6 deputy ministers are women.

Countries in the second group have established structures aimed at boosting the status of women in the political arena. In Namibia the constitution provides a favourable framework for increased women's participation in the political process. Apart from the fact the constitution affirms the equality of men and women, it prohibits discriminatory practises on the grounds of gender. Furthermore, certain affirmative action policies are in place to promote women's interests. Immediately after Namibia gained independence in 1990 there was a deliberate effort to make all the laws of the country gender-sensitive (box 1.2). A Law Reform and Development Commission was established, with a Women and Law Subcommittee. While women's representation in the national executive and legislature is still low (23% of parliament), women constitute 46% of the Namibian civil service. Furthermore, a National Gender Policy requires the Department of Women's Affairs to promote, co-ordinate, monitor and evaluate gender equality in all areas of public life in Namibia. At the University of Namibia a Gender and Training Research Unit offers advisory services to women and conducts research, and a Legal Assistance Centre informs women of their legal rights. Namibia ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1997.

The Standing Committee on the Quality of Life and Status of Women has had an important role in working with civil society to develop the Women's Budget Initiative in 1995, which sought to address the obstacles to equitable socioeconomic development in South Africa

In Senegal positive steps are being taken to better involve women in governance. Constitutional reform led to the creation of a Ministry for Women's Affairs that has overall responsibility for promoting their concerns. In 1997 the government drafted a National Action Plan for Women that enunciates the goals and strategies to empower women in Senegal. Women's involvement in politics has been increasing as a result of a positive discriminatory affirmative action policy adopted after the 1998 elections. The political parties agreed to a 25% quota for women in party positions and as candidates for elective office. This has increased women's leadership roles in political parties. For example, the leader of the Parti Pour la Renaisance Africaine is a woman. She was the founder and first secretary of the party.

Countries in the third group have weak, non-operational or no constitutional provision or national institutional framework for politically empowering women. Policies are drawn on an ad hoc basis, not from a set of consistent principles and policies. For instance, in Kenya only 5 of 220 seats are reserved for women in the

Box 1.2 Empowering women in Namibia

Namibia's electoral law requires approximately 25% of candidates in local government elections to be women. This worked well in the local government elections of 1992 and 1998, with women winning 32% and 40% of local government seats respectively. The Married Persons Equality Act of 1996 made married women and men equal before the law; it replaced a previous law that considered men the heads of households and prevented married women from opening their own bank accounts or owning property.

Source: Nambia country report

parliament. In Nigeria no seats are reserved for women at the national or state level. Of 36 states in the country, there are no female governors. The only female deputy governor (Kofoworola Bucknor from Lagos State) in the fourth republic (1999–2003) was forced to resign after prolonged differences with the state governor.

Despite the encouraging trends in women's political empowerment in some countries, one area that remains inadequately attended to is the reporting of violations of women's rights and the taking of appropriate action by government agencies to remedy violations. Except in Namibia and South Africa, the survey of experts shows discouraging trends in terms of reporting and action on women's rights violations in selected countries. In Burkina Faso, Lesotho, Senegal, Gabon and Uganda less than 30% of the experts surveyed said that government organs usually report the violations of women's rights or that action is taken on them. Greater gender consciousness is needed in the activities of government agencies in these countries.

Despite the encouraging trends in women's political empowerment, one area that remains inadequately attended to is the reporting of violations of women's rights and the taking of appropriate action by government agencies

African countries differ in how much they promote the culture of women's political empowerment. Some have created a basic foundation through the law, with institutions and processes on which further advancements can be made. Generally, the level of women's involvement in politics, despite the countries considered "high flyers", is still low in Africa. Most remarkable is that African countries are now setting minimum standards for themselves. The Southern African Development Community has set a target of 30% for women's representation in parliament and other state organs in Southern African countries by the end of 2005.

Public voices and the legitimacy of the political framework

As covered more in depth in chapter 4, people participate in governance through a variety of means, and the voices of the people are heard beyond state institutions. The media, membership in associational groups in civil society and voting define how people relate with the political system and the level of legitimacy conferred on the political framework.

The African countries that have adopted multiparty constitutional democracy and liberalised the political arena tend to enjoy considerable political legitimacy because different public voices are heard through various organs. The constitutional basis of governance ensures government by popular consent through voting and political

representation, promotes the rule of law, guarantees the rights of the people and limits arbitrary action by the state. It also expands the political space for nonstate actors to participate in various aspects of the public sphere and to influence the process of decision-making.

The African countries that have adopted multiparty constitutional democracy and liberalised the political arena tend to enjoy considerable political legitimacy

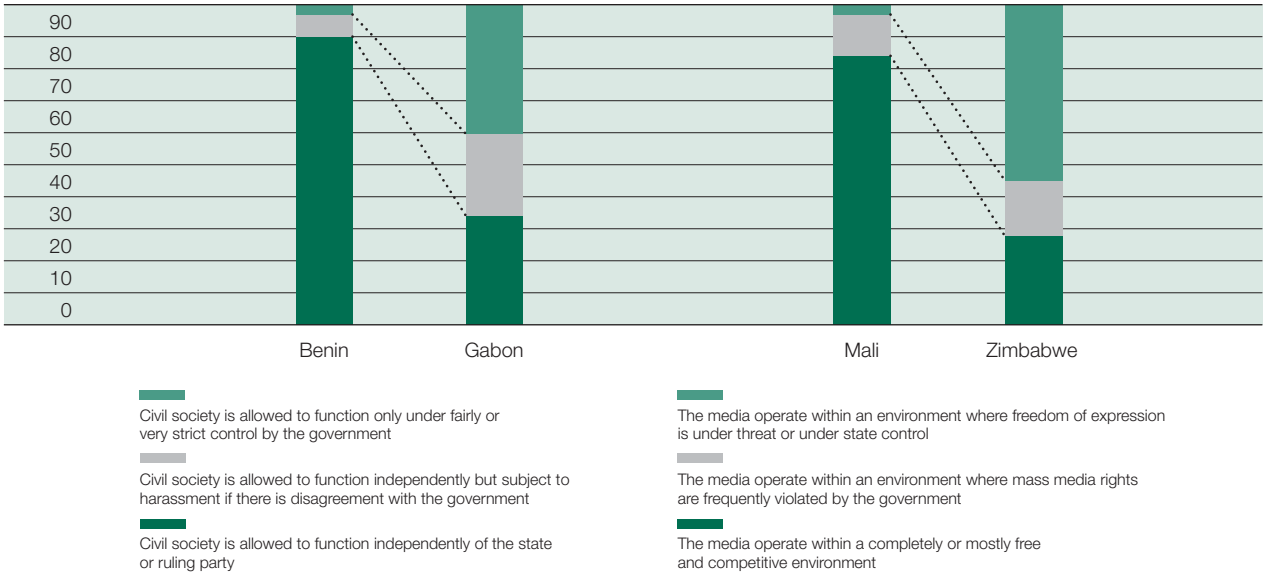
But there are challenges in terms of expanding the public sphere. Some countries still suppress the operation of civil society organisations by imposing draconian laws on their activities and keeping the media under the sledgehammer of the state. A comparative view of the survey of experts from selected countries shows a wide disparity on the degree of media and civil society organisation independence (figure 1.11). While in Benin and Mali there is a popular perception that civil society organisations have relative independence and freedom of operation, the opposite is the case in Gabon and Zimbabwe related to the media, where the legacy of authoritarian rule has yet to recede. On average across project countries, the majority of the experts (52.5%) believed that civil society is allowed to function independently of the state or ruling party, while 55.5% thought that the media operate within a completely or mostly free and competitive environment.

Media explosion

The liberalisation of political space has allowed private newspapers, radios and television stations to flourish in Africa and provided an opportunity for diverse sources of information and views as well as a means for the people to influence governance. The government no longer monopolises the public sphere; the people also participate in it. Although government radio and television stations tend to dominate in the households surveyed, private newspapers have already overtaken

Figure 1.11 Expert opinion on civil society independence in Benin and Gabon... and mass media independence in Mali and Zimbabwe

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

government-owned newspapers as a source of information. An average of about 22% of households surveyed indicated a preference for privately owned newspapers as source of print media information compared with about 13% who indicated a preference for government newspapers (figure 1.12).

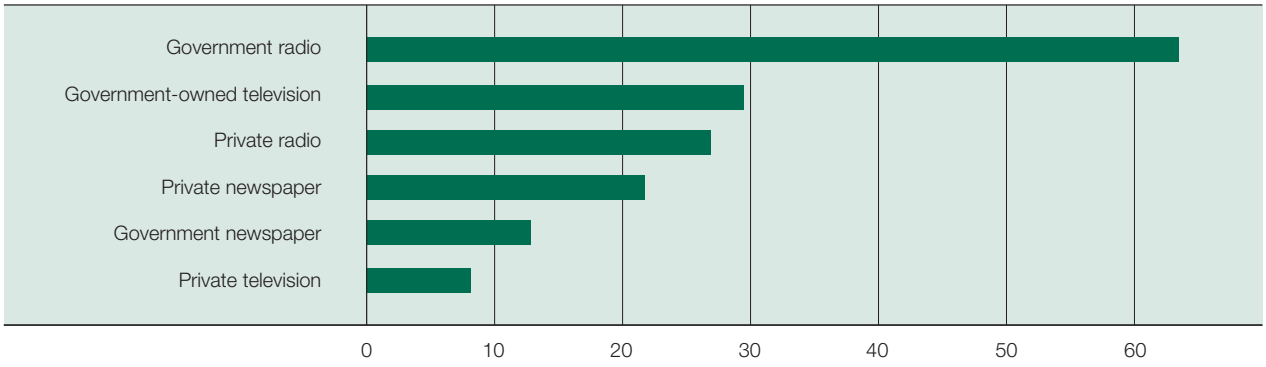
Several African countries, such as Ghana, Mali, Nigeria and South Africa, have a similar private media establishment. In Mali there are about 30 private newspapers, 147 independent local radios, 7 state radio stations and 1 national television station. And in Nigeria both the print and electronic media now have more private participation than state participation. The role of the state in media business is now limited more to regulation than investment in the sector. This is a good development for Africa because more voices are heard and more people are interacting with the political system through the organs of the media.

Community radio stations not only keep the people abreast of information about government activities, but also allow the people to insist on accountability and good governance by keeping tabs on local leaders

In Ghana the most robust public participation in policymaking in the Fourth Republic is taking place in the media. With more than a dozen newspapers (10 of them independently owned), about 40 radio stations (2 of them state-owned and 30 independent) and 3 television stations (2 of them independent), the media have become a major forum for the discussion of national policy. Other new avenues for public participation include governance forums initiated by government institutions in co-operation with other agents, public hearings of parliamentary committees and presentations and roundtables for stakeholders conducted by civil society groups, opinion leaders and think tanks.

The people in most African countries usually make selective choices in media access. The lowest participation rate is in the print media, a trend that may be related to low literacy rates and high printing costs. Radio is the most common form of media because most of the rural population can afford it and easily access it. To promote civic education and to involve the people in governance, some countries are encouraging the establishment of community radio stations that are not state-owned. These stations not only keep the people abreast of information about government activities, but also allow the people to insist on accountability and good governance by keeping tabs on local leaders.

Figure 1.12 Household opinion on the most useful sources of information
Share of households surveyed, average across project countries (%)



Source: ECA governance survey of households

It is still vital for media, whether state-owned or private, to build their capacity to act as guardians of public accountability and transparency. As a watchdog, it is important that the media maintains its objectivity, reporting and questioning what it witnesses. For instance, African journalist unions could be encouraged to adopt a media charter that would spell out the codes of conduct inherent to a responsible media. Part of the challenge of maintaining media neutrality on the continent as well is the very low salary-base of those in the profession, which can increase favour exchange policies between newsrooms and politicians, for example. For a society to consider that the press is actually free, there needs to be a guarantee of financial independece.

It is still vital for media, whether state-owned or private, to build their capacity to act as guardians of public accountability and transparency

Growth of civil society

As covered more in depth in chapter 4 as well, civil society is another avenue of civic engagement with the state that promotes the legitimacy of the political framework. The process of democratisation in Africa has induced massive growth in the civil society sector. Civil society groups have emerged to promote and defend human rights, gender, the environment, children, legislative advocacy and the like. The increase in funding for civil society from donor agencies has greatly assisted the process.

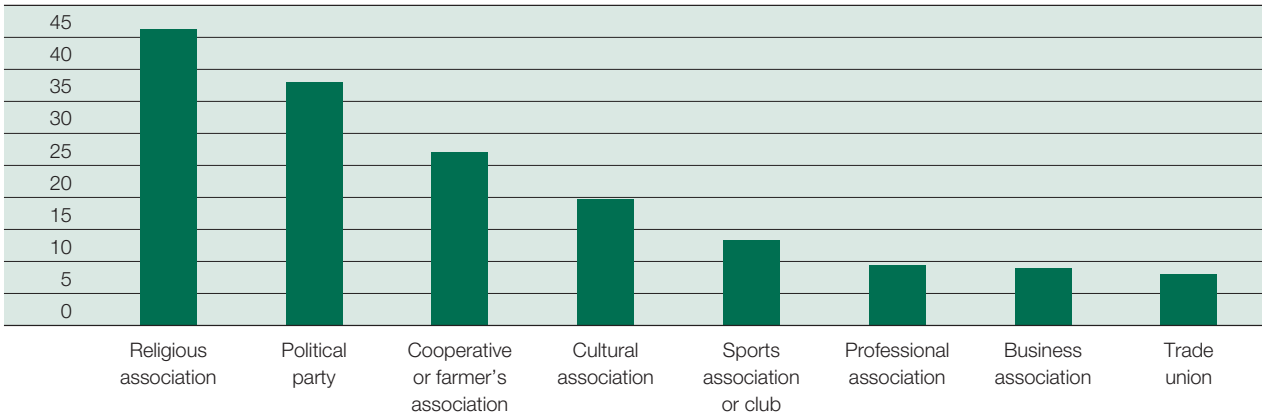
In Tanzania there were 168 registered civic associations in 1990 and more than 9,000 in 1999. Some of these associations are highly personalised, lack a social base and following and are driven by financial considerations. Nongovernmental organisations in many African countries provide avenues of political socialisation for the people, intervene in the political process to make demands, insist on accountable governance and confer legitimacy on the political system. Some 46% of households surveyed indicated membership in a religious organisation and 38% indicated membership in a political party, the highest rankings (figure 1.13). Membership in professional and business associations and trade unions ranked lowest, all below 10% on average.

Making choices through voting

Voting is a major form of political participation and a parameter of the legitimacy of a democratic system. The survey of households indicated a good voting culture in many African countries, with 88% of the respondents voting, making voting the most common form of participation in public affairs, followed by attending political party meetings and rallies (figure 1.14). Writing to newspapers was the civic activity that the fewest (less than 10%) people engaged in.

Voter turnout patterns differ by country. High voter turnout engenders confidence in the political process and reinforces the legitimacy of the political framework. In Malawi, South Africa and Tanzania, for instance, the voting rate is very high. In 1994 about 80% of registered voters in Malawi participated in the presidential and parliamentary elections, and about 93% did so in 1999. In South Africa's first multiracial elections in 1994 the voter turnout was 91%, this declining to 72% in 1999. The National Electoral Commission Report in Tanzania indicates that in the 2000 general elections 8.5 million of 10.1 million registered Tanzanians voted at the presidential, parliamentary and local councillorship elections, a voter turnout rate of 84%.

Figure 1.13 Household membership in associations and political organisations
Share of households surveyed, average across project countries (%)

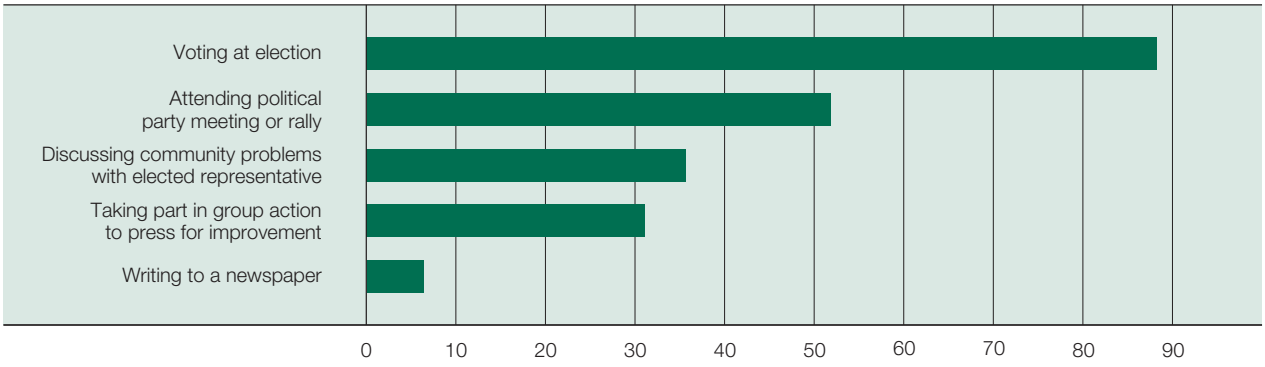


Source: ECA governance survey of households

The integrity and legitimacy of the electoral process

The integrity and legitimacy of the electoral process involves how the various structures, institutions and processes related to elections make for fair and impartial electoral competition. Political parties and the nature of their formation, character and activities, the electoral institution charged with managing the electoral process, the nature of the electoral law, the credibility and transparency of the electoral process and the mechanisms established for conflict resolution or adjudicating post-election conflicts all determine the extent of the people's confidence in the electoral process and how free and fair they perceive it to be.

Figure 1.14 Citizens' participation in public affairs
Share of households surveyed, average across project countries (%)



Source: ECA governance survey of households

Political parties

Political parties provide a peaceful means of controlling the policy-making structures of government and offer differences in views and policy priorities. Through parties, issues can be identified and preferences indicated by the electorate.

Electoral competition is conducted in most countries through political parties, which are a pillar of representative democracy. As such, it is important to understand how political parties are formed, the rules or procedure for their registration, their internal organisation (whether they afford open political participation to their members through democratic processes), their social base and inclusiveness (whether they reflect the diversity of society) and the extent to which there is a level playing field for all parties in terms of access to electoral resources such as the media, funding and freedom to operate without intimidation. These issues determine how well parties are institutionalised and whether a genuine multiparty democracy exists in a country.

Registration

Political parties provide a peaceful means of controlling the policy-making structures of government and offer differences in views and policy priorities

The procedures and guiding principles for registering political parties differ by country. Some countries have administratively flexible party registration procedures (Mauritius, for example). Some regimes have some registration restrictions (Ethiopia, Ghana, Malawi, Senegal and South Africa, for example). And others have tough registration procedures or rules (Nigeria and Tanzania, for example).

The organ that registers parties also differs by country. In some countries the electoral commission registers political parties (Ghana, Nigeria and South Africa, for example), while in others state departments do. In Kenya, where political parties are registered like other associations or clubs, the registrar general under the Societies Act does. The practise has been criticised by lawyers and politicians, but it is the legal norm in Kenya. In Senegal the Ministry of Internal Affairs registers political parties, while the National Elections Commission conducts elections. In Ethiopia the Office of Registration, under the National Elections Board, registers political parties and issues certificate of registration to them after fulfilling the necessary registration requirements.

On party registration, Mauritius has a flexible rule on the formation of political parties. They can be freely formed without being registered as associations unless there is an election. Political parties are required to register with the Electoral Supervisory Commission before an election for electoral management. The electoral law does not deal with the formation and sanctioning of political parties, so no party's registration for an election has been denied.

In Ghana, the procedure of party registration is liberal, but there are some restrictions. Ghanaians of voting age are free to form or join a political party, but parties cannot be formed on an ethnic, religious, regional or professional basis. To register, prospective parties must produce a constitution, names and addresses of its national officers and a description of its party symbols, and it must pay a registration fee determined by the Electoral Commission. Seven political parties fielded candidates for the 2000 general elections.

Similarly, parties in Ethiopia can be registered as regional or national political parties. In order to qualify as a nationwide party, the subscriber organisation must have at least 1,500 founding members, with no more than 40% from any one region and the rest from at least four other regions. For regional political parties, the subscribing organisation must have at least 750 members, with more than 40% from one region. While many countries legislate against forming political parties along ethnic lines, Ethiopia's party law does not because it conforms to the system of ethnic federalism.

In South Africa section 19 of the constitution, states that "every citizen is free to make political choices, which includes the right to form a political party, to participate in activities of, or recruitment of members for a political party, to campaign for a political party or cause". The Electoral Act provides the regulatory framework for registering political parties and conducting democratic activities. South Africa has about 100 registered parties that have competed in one or more elections.

Mauritius has a flexible rule on the formation of political parties, as they can be freely formed without being registered as associations unless there is an election

Nigeria and Tanzania have somewhat rigid processes. In Tanzania the Political Parties Act 5 of 1992 regulates registration of political parties. Parties are first given provisional registration and then have 180 days to apply to the Registrar of Political Parties for full registration. To be fully registered, a party has to first be provisionally registered, obtain at least 200 members who are eligible to vote in parliamentary elections and who are from at least 10 regions of the United Republic, with at least two regions in Tanzania Zanzibar and one region each from Zanzibar and Pemba. Again, parties cannot be formed on an ethnic, regional or religious basis.

In Nigeria rules for the formation and registration of political parties come from part III of the controversial Electoral Act of 2001 and section 222 of the 1999 Nigerian constitution. In a landmark judgement in November 2002, Nigeria's Supreme Court ruled against certain provisions of the Electoral Act of 2001 that deal with party registration. It declared them unconstitutional, null and void. The court directed that political associations denied registration by the Independent National Electoral Commission be immediately registered. Some 27 new political parties were registered, for a total of 30 political parties in Nigeria. This judicial interpretation of the Electoral Law further opened the political space in Nigeria and simplified the process of party formation and registration in the country.

While the requirements for party registration differ by country, the processes are largely considered equitable and transparent. Even in Nigeria, where the Electoral Law was regarded to be unfair and unconstitutional, due process was followed by aggrieved political associations in challenging the law in court, which shows a high level of confidence in the electoral process and its mechanism for seeking redress and managing electoral related conflicts.

Internal governance

In most African countries internal governance of political parties is weak. Although, the parties have constitutions, internal procedures and rules that on the surface are democratic, many of the parties display authoritarian tendencies. This is because most parties are left to determine their own organisation; electoral and party laws

generally do not insist on or enforce certain minimum democratic standards for political parties. Ethiopia, Kenya, Malawi and Senegal have serious problems with internal governance of political parties, with undemocratic practises constituting the norm. And in South Africa there is no regulatory framework for the internal governance of political parties.

In Ethiopia most political parties have standard formal organisational structures (congresses, central committees, executive committees and specialised units) that should form the basis of democratic politics in the parties, but there are gross violations of internal rules and a prevalence of undemocratic culture, especially by the leadership. Some party members have filed complaints with the National Electoral Board and the Federal High Court alleging violations of party bylaws. The internal politics of political parties in Ethiopia, as in many African countries, are dominated by personalities that have amassed overwhelming powers to the detriment of popular participation and democratic leadership.

While many countries legislate against forming political parties along ethnic lines, Ethiopia's party law does not because it conforms to the system of ethnic federalism

In Kenya, as in other countries, there is a democracy deficit in the management of political parties, partly because the individuals who chair and finance the parties created most of them. They tend to hold tight to their parties and run them more or less like private companies. The regional bent of political parties exacerbates the problem of internal democracy. Since the bulk of support usually comes from the area or region where the leaders hail from, the leaders usually favour people from their ethnic group or region for the party nomination for elective offices.

In Malawi political parties are organised in a top-down approach, without consulting the people at the local level and without internal democracy. A clear indication is that the United Democratic Front has not held a convention in more than eight years, and both the Malawi Congress Party and the Alliance for Democracy, the two main opposition parties, have held only one convention since multipartyism arrived. Conventions should be annual events where the people at the grassroots level can air their views and elect party officials. The lack of internal democracy has led to frictions, factions and divisions. The two opposition parties in Malawi's parliament are both internally divided.

In contrast, the electoral law in Ghana, Mali, Nigeria and Tanzania emphasises the democratic character of political parties. In Ghana parties are expected to hold a national delegates' conference every four years to elect the leadership. Representatives of the Electoral Commission supervise the election of party officials to ensure transparency and credibility. In Mali the law requires parties to democratically choose their candidates for party offices and elective public positions, but there is usually a wide gap between precepts and practise. In Nigeria the electoral law provides for the periodic election of principal officers and members of the executive committee or the governing board of the parties. Political parties must therefore hold an annual convention. In fulfilling this obligation, they are expected to reflect the federal (diverse) nature of the country in the election of key officials of the party. The procedure for selecting candidates for elective offices is also through the popular convention of the party. In Tanzania the law stipulates that a party can be de-registered if it does not allow periodic and democratic election of its leadership. The Registrar

of Political Parties recently de-registered the Tanzania People's Party and Popular National Alliance for failing to elect their party officials per their constitutions.

Opposition parties

A conducive political environment that guarantees freedom of operation and adequate police protection to all political parties is essential for free and fair electoral competition and for political parties to grow and be institutionalised in the democratic process.

Experiences with freedom of operation for opposition political parties have been mixed. In nearly all cases the law guarantees freedom of operation though the reality differs. In Benin, Mauritius and Senegal opposition political parties enjoy relative freedom of operation in their campaigns, meetings and other activities, have adequate police protection when necessary and can freely air their views on national and international issues. More than 70% of the experts surveyed in those countries agreed that opposition parties enjoy reasonably good security without interference from the state or the ruling party.

In many countries there is a democracy deficit in the management of political parties, partly because the individuals who chair and finance the parties created most of them

However, in many countries opposition parties do not enjoy those political rights. The political environment is often very intimidating for the opposition, whose supporters are harassed and sometimes arrested on trumped-up charges by agents of the state acting on behalf of the ruling party. There are cases of intimidation and poor police protection in Ethiopia, Kenya, Malawi and Tanzania, where 65% of the experts surveyed said that opposition political parties have little or no security.

In Kenya the general political environment prior to the defeat of the Kenyan African National Union regime in December 2002 was very unfriendly, with the government making it very difficult for opposition political parties to operate freely. Before a 1996 constitutional amendment opposition parties were required to obtain licences to hold political rallies. Their public gatherings were often cancelled at the last minute on the flimsy excuse that they posed a security risk. On other occasions the police, acting on the instructions of the Provincial Administration, disrupted opposition parties' rallies. After the 1996 amendment political parties were no longer required to apply for licences to hold political rallies, although they were required to notify the relevant police station two weeks prior. The new regulation, though, did not prevent the continual harassment and intimidation of opposition parties. Some parts of the country were even informally declared zones of the ruling party, out of bounds to opposition political parties.

In Tanzania the operation of opposition political parties is also constrained by the state. The law requires that political parties seek permission from the police 48 hours before any rally or procession. The police have used this law on several occasions to prevent opposition leaders from holding gatherings, thus curtailing their freedom to freely organise political activities as provided for under the law. And in Malawi opposition parties suffer from the deleterious activities of the "youth wing" of the ruling party that calls itself the "Young Democrats". They use intimidation, harassment and violence to disrupt rallies of opposition political parties. The president and other leading members of the ruling party, the United Democratic Front, have regularly condemned the use of political violence and are keen to distance

themselves from the activities of the "Young Democrats", although no punitive action has been taken against them.

In South Africa the Code of Electoral Conduct lays out the ground rules for political participation and fair conduct by all parties at political campaigns and elections, but interparty activities, especially during political campaigns, have been riddled with violent political clashes. Of special mention are the clashes between members of the African National Congress, (ANC), the dominant national party and the Inkatha Freedom party, a strong regional party in Kwazulu-Natal. More instances of violence were recorded in the second democratic elections (1999) between members of the ANC and the newly established United Democratic Front, a party formed by a former member of the ANC. The trend of violent conflict among political parties, which limits their operational freedom, has continued to decline in South Africa as the democratic process has been consolidated.

65% of the experts surveyed said that the political environment is often very intimidating for the opposition, whose supporters are harrassed and sometimes arrested on trumped-up charges by agents of the state acting on behalf of the ruling party

Party funding

Regulations on party funding differ by country. There are two main sources of party funding: public and private. Private sources include contribution and donations from party members, and the general public including private domestic firms. Most countries disallow foreign sources of funding for political parties. While some countries provide a ceiling on the amount of money individuals and private organisations can contribute to a political party, other countries have no such limit. All countries subscribe to private sources of political party funding. The distinguishing point is on the use of public resources and financing, which has three directions. In some countries, such as Malawi, Mali, Nigeria and Tanzania, there is direct state funding of political parties with different modalities and details. In countries such as Ghana and Senegal there is partial state support or indirect funding for political parties. And in Ethiopia and Kenya, for instance, the state does not provide any funding support to political parties.

Since 1997 political parties represented in Malawi's parliament have been funded by the state. A 1997 law stipulated that 0.25% of national revenue should be earmarked for political parties. In Nigeria section 228 (6) of the electoral law allocates annual grants to political parties through the Independent National Electoral Commission on a fair and equitable basis in order to assist the parties in discharging their functions. In Tanzania 2% of the annual recurrent budget is allocated to political parties, with the funds distributed to the political parties based on the number of seats won in the parliament and local council elections. The payments are made to the party trustees by the registrar of political parties.

Ghana has a policy of partial or indirect state funding of political parties. The state allows the use of its vehicles and nothing else. In Senegal the state pays for the manifestos of the candidates to be issued and posters to be posted, and provides venues for political rallies. Parties also receive free media coverage.

A common practise is for the ruling party to take undue advantage of state resources and deploy them for its private political ends during political campaigns and elections. Using government vehicles, diverting public funds to the political party and awarding contracts to party members are unhealthy political practises that do

not encourage a level playing field among political parties and undermine the fair competition among political actors and organisations in a democracy.

Some regulatory measures are needed for the financial profile of political parties, because they are public entities (box 1.3). Otherwise, political parties may become a safe haven for financial malfeasance by those who manage those parties.

Although, the electoral or party laws in Malawi, Mali, Nigeria and Senegal provide for regular auditing and monitoring of political parties' accounts by the state electoral commission or another government department, in most countries the enforcement regime is very weak. In many other countries political parties have relative autonomy in terms of their finances and are accountable only to their members. In Ethiopia and Mauritius there is no limit on campaign expenditure. Candidates and their parties can raise as much money as possible and disburse it as they wish.

A common practise is for the ruling party to take undue advantage of state resources and deploy them for its private political ends during political campaigns and elections

Equal access to media

The principle of equal access to state media for political parties during election campaigns is outlined in the constitution and electoral laws of most countries in Africa. The problem is that the laws are rarely respected, with the ruling party using the power of incumbency to create uneven access to media coverage in its favour. Stakeholders of civil society organisations and opposition parties may need to exert political pressure and secure judicial intervention to force the ruling party and the state-owned media to respect equal-access laws.

The problem of access to media during election campaigns is more acute in countries with only state-owned media stations. In Ghana, Nigeria and South Africa, which have private independent radio stations, television stations and newspapers, it is difficult to muzzle opposition parties in the public information space. Opposition parties' ability to access the media depends largely on the resources that they are willing to commit to information dissemination. It is not a question of the availability of a medium.

Box 1.3 Funding of political parties

The International Institute for Democracy and Electoral Assistance suggests a legal framework and basic guidelines by which party financing can be organised. It proposes a legal framework that "ensures that all political parties and candidates are equitably treated by legal provisions governing campaign finances and expenditure" and the following principles:

- The system of disclosing the funding received by any party or candidate should be transparent.
- There should be no discrimination in access to public funds for any candidate or party.
- Public funding should be made available to parties on an equitable basis.
- A level playing field should exist among the parties or candidates.

Source: IDEA 2002, pp. 55–56

In Tanzania section 53 of the Electoral Act of 1985 guarantees equal access and opportunity for public media coverage to all political parties during election campaigns. Despite directions from the National Electoral Commission to state-owned media, there were many complaints that the opposition parties were not given equal access to the public media in the 2000 elections. The Tanzania Election Monitoring Committee observed that the opposition leaders were hesitant to use public media for fear that "they would be subjected to unnecessary red tape" (TEMCO 2000).

The problem of access to media during election campaigns is more acute in countries with only state-owned media stations

In Malawi the Parliamentary and Press Elections Act provides every political party with the right to have the substance of its campaign reported on by the Malawi Broadcasting Corporation (MBC) and in every newspaper in circulation in the country. Furthermore, the act requires MBC to remain neutral in its reporting. All political parties and pressure groups are supposed to receive equal hearing, but there were allegations from leaders of civil society and opposition parties that the ruling party dominated the airwaves during the 1999 election campaign. Five MBC staff alleged that they were dismissed on political grounds soon after the elections and took their case to the ombudsman for redress. Indeed, a former assistant controller of programmes testified in court that the MBC would always be the mouthpiece of the ruling party.[2]

The Kenya African National Union party virtually monopolised the only state-owned media, the Kenya Broadcasting Corporation (KBC). The party enjoyed disproportionately higher coverage than the opposition parties on KBC radio and television stations. Some 36% of the experts surveyed in Kenya and 56% in Malawi said that opposition parties do not have easy access to the media and other public resources. The situation is better in Mozambique and Cameroon, where 85% and 74% respectively of the experts surveyed said that opposition parties have fairly good or equal access to the media and other public resources during election campaigns. Overall, the majority of experts surveyed across project countries (69.5%) believed that media were equally accessible to all registered parties, while only 19.4% believed they were not.

A deliberate effort was made in Mali. The National Committee on Equal Access to State Media was established to ensure balance and pluralism of information of the country's different political, economic, social and cultural sensitivities and fair management of television and radio slots and editorial space for the candidates and political information during election campaigns. The High Council of Communication regulates independent radio stations and newspaper coverage of political campaigns in election periods. This strict regulatory policy has ensured better access to state media by opposition parties in Mali.

Party composition

In many African countries political parties reflect the regional, ethnic and social diversity of the country. There are two compelling reasons for this. First is the logic of electoral competition, which makes it imperative for a party to reflect the social character of its constituency in order to secure votes. Second is that most countries legally review political parties to be socially inclusive.

In Ghana, Nigeria and Tanzania the law clearly states that political parties have to be heterogeneous and reflect the sociological profile of the country. Parties cannot be formed on ethnic, regional or religious grounds. In Nigeria the leadership of political parties is required to reflect the country's "federal character".

Allowing political parties organised along ethnic lines creates a rich menu of parties of different makeups in which the diversity of the country does not suffer. Ethnic parties reflect the social composition of their ethnic area, while the national party is to be national in orientation and outlook. Apart from geographical dispersion, political parties also try to accommodate different social interests in the country, such as those of women and youth. The shortcoming of women or youth wings is that beyond mobilising social groups for electoral purposes they are hardly reflected in the leadership composition of those parties.

Electoral commissions

The functions performed by electoral commissions are similar in most countries. They handle all aspects of elections, including voter registration, preparation of the register, political party registration and conducting of elections. The main challenge with electoral commissions is guaranteeing their autonomy in order to ensure free, fair and credible conduct of elections. Questions include what the legal framework for establishing the electoral commission should be, how many commissions are needed to manage elections, how the electoral commission should be constituted, what the mode of appointment and tenure of members should be, how the commission should be funded, what operational structures should be relied on to facilitate the conduct of elections and who it should be answerable to.

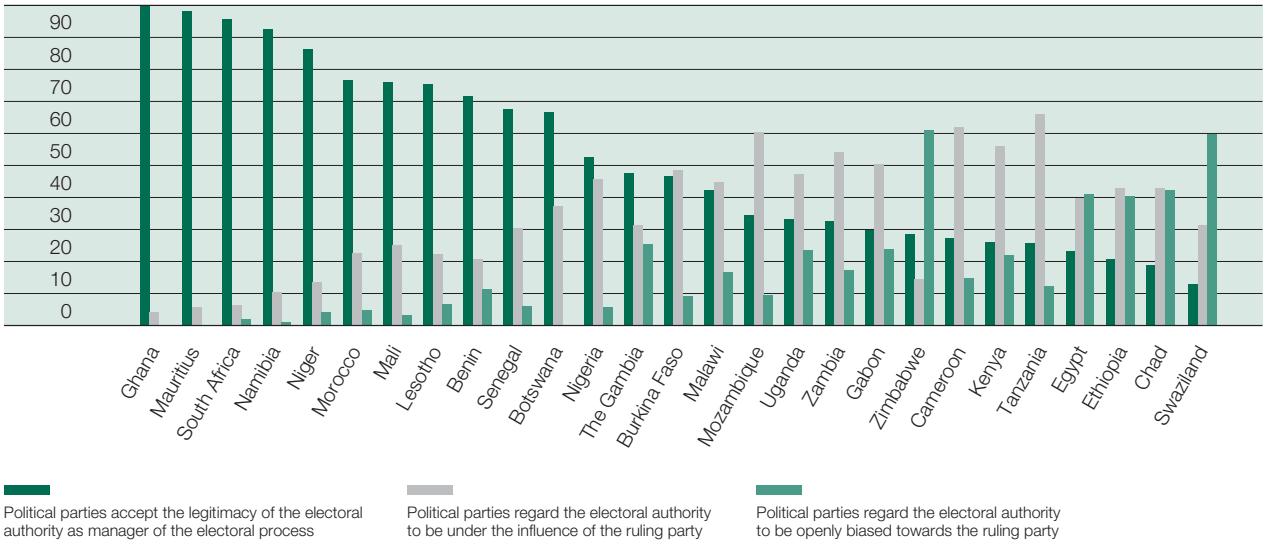
The National Committee on Equal Access to State Media was established in Mali to ensure balance and pluralism of information of the country's different political, economic, social and cultural sensitivities and fair management of media during election campaigns

These issues are highly contentious and spark serious controversy in many countries. Accordingly, the opinions of experts on the legitimacy of the electoral authority differed widely across countries (figure 1.15). In Ghana, Mauritius, South Africa, Namibia, Niger, Morocco, Mali, Lesotho, Benin, Senegal, Botswana and Nigeria the experts surveyed said that political parties generally accept the legitimacy of the electoral authority to manage the electoral process, while in The Gambia, Burkina Faso, Malawi, Mozambique, Uganda, Zambia, Gabon, Zimbabwe, Cameroon, Kenya, Tanzania, Egypt, Ethiopia and Chad, the credibility of the electoral authority is contested. The perception in Swaziland is an extreme case, where the experts surveyed believe that the electoral authority is very partisan and openly biased towards the ruling party.

In theory most countries have a legal framework that espouses the autonomy of electoral institutions. In Tanzania, for example, article 74 (7) of the constitution declares "for better carrying out of its functions, the Electoral Commission shall be an autonomous department". Further, article 74 (11) states "The Electoral Commission shall not be obliged to comply with orders or directions of any person or any government department or the views of any political party". In South Africa the Electoral Commission's autonomy is strongly affirmed by the 1996 constitution. Chapter 9 states that the body must be independent and subject only to the constitution, and the law must be impartial and must exercise its powers and perform its functions without fears or prejudice. The constitution further states that no person or organ

Figure 1.15 Expert opinion on the legitimacy of the electoral authority

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

may interfere with the functioning of the institution and that it is accountable to the National Assembly in the discharge of its duties. In most countries, however, the operational basis of the institution often lags behind the legal provisions.

In slightly more than half of the countries surveyed, the credibility of the electoral authority is contested

Most countries have opted for one national electoral body to handle electoral matters. In other countries there is more than one agency saddled with electoral responsibilities. In Nigeria, for example, the Independent National Electoral Commission handles elections at the federal and state levels and the State Independent Electoral Commissions also handle local government elections. In Mauritius the Electoral Boundaries Commission delimits constituencies and electoral boundaries and the Electoral Supervisory Commission is responsible for conducting elections.

The composition and appointment of electoral commission members is a contentious issue because it impinges directly on the autonomy of electoral institutions. There are two related questions. How many members should there be and how should they be selected? In many countries, Ethiopia, Ghana, Nigeria and South Africa, for example, the president appoints the members of the electoral commission, sometimes with parliament's approval. Minimum standards of qualification, experience and possibly non-partisanship are usually set, but controversy remains over the extent to which the president, and hence the ruling party, controls the electoral institution. Electoral commissions appointed by the president often attract severe critique from major stakeholders in the country, including civil society organisations, opposition political parties and the general public, especially when the performance of those commissions falls below acceptable standards.

The problem of appointing electoral commission members poses a challenge to many countries in designing innovations. In Mali the president appoints the members of the electoral institution, and the practise is usually for it to be a balanced group and plural in composition. The Commission Electorale Nationale Indépendante comprises representatives of the government, opposition political parties in parliament and organisations of civil society.

Kenya has modified its formulas for appointing members of the electoral commission. Previously, the president had selected the members, but after the Inter-Party Parliamentary Group negotiations of 1996, it was agreed that parliamentary parties, on the basis of each party's strength in parliament, would nominate members of the commission to be appointed by the president. In other words, the commission is bipartisan or interparty.

Namibia adopted a merit-based system for appointing electoral commission members. The Electoral Amendment Act of 1994 requires prospective members of the Electoral Commission apply and be screened by a selection committee. The committee recommends eight candidates to the president, who appoints five of them.

The main question is whether the electoral commission should be a compact body of few people or a large institution that reflects the social diversity of the country

The main question is whether the commission should be a compact body of few people or a large institution that reflects the social diversity of the country. In Nigeria, for example, under the 1979 constitution the Federal Electoral Commission comprised 25 full-time members, with each of the then 19 states of the federation represented by a member in addition to those appointed by the federal government. This was thought to be unwieldy and prone to internally and externally induced conflict. In 1987 a much more compact structure of nine members was introduced, with no member representing a particular state. The new structure did, however, reflect the significant ethno communal and regional diversities in the country (Adele-Jinadu 1994). Ghana and Tanzania each have seven electoral commissioners, and South Africa has five, one of whom must be a judge. It is difficult to recommend a uniform number of electoral commissioners because the challenges of elections differ by country. The emphasis should be on choosing a size that will not be unwieldy and impair operations.

Funding electoral commissions is one way the executive can stifle their activities and compromise their autonomy. In most countries the executive decides the commission's funding and controls its disbursement. Although parliaments usually appropriate the budget, the executive usually proposes the funding level for the electoral agency. In many countries electoral commissions are denied funds and must solicit resources from the executive. Autonomy of funding is necessary and may be ushered by earmarking funds for the commission in separate and independent accounts, such as the Revenue Consolidated Fund advocated for in Nigeria because monies for electoral commissions are regularly not released on time or are inadequate. Furthermore, in Malawi, the chair of the Electoral Commission complained that the government had refused to release funds for the commission to begin planning for the 2004 tripartite elections. The election risked being a disaster if the funds were not released on time (Semu-Banda 2002).

Credibility and transparency of the electoral process

Elections are an important element in liberal democracy. They are a viable means of ensuring an orderly process of leadership succession and change and an instrument of political authority and legitimacy. The electoral process is the mechanism through which elections are consummated. Aspects of the electoral process include the nature of the electoral system and electoral law, voter registration and display of voters' register, balloting, ballot or vote counting, declaration of election results and electoral conflict management mechanisms in the post-election period. The electoral commission is central to the electoral process.

In countries where popular input has been restricted, political disagreement on electoral law abounds

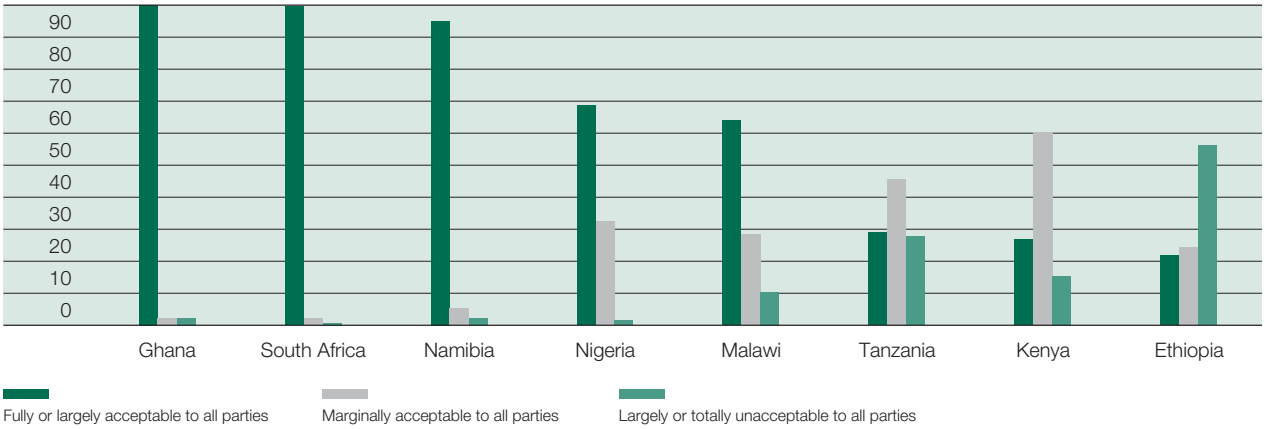
The electoral law sets the tenor and provides the framework for the entire elections process. It is enacted by the parliament after broad consultation with different interest groups in society. But in countries where popular input has been restricted, political disagreement on electoral law abounds. For example, the speedy manner of the enactment of Nigeria's 2001 Electoral Law by the parliament, the alleged alterations to it by the executive, and its provisions relating to the registration of political parties and the schedule for elections were very controversial. In response to the law, a coalition of civil society groups formed the Electoral Reform Network to offer input into the process.

Kenya and Mali's electoral laws are also under scrutiny as opposition political parties and civil society organisations demand their reform. The experts surveyed said that the electoral law in The Gambia and Niger is credible, but more than 70% in Swaziland said that the electoral law does not ensure the independence of the electoral system.

The electoral system, the basis by which votes are translated into seats, especially in parliament, derives from electoral law. Namibia and South Africa have a proportional representation system, and Ethiopia, Ghana, Kenya, Malawi, Nigeria and Tanzania have the "first past the post" system. The proportional representation system, sometimes also called "full representation" is a multi-winner system and allows for representation in the legislative assembly according to the proportion of votes received by the various parties or running candidates. And the "first past the post" system is premised on a "winner-takes-all" principle, which increases the stakes of politics. An inclusive and broad representational electoral system, especially by plural societies, is often needed to diffuse the tension and conflict associated with elections. In Ghana, South Africa, Namibia, Nigeria and Malawi the electoral system is quite credible, but there are doubts as to its credibility in Tanzania, Kenya and Ethiopia (figure 1.16). On average across project countries, the majority of the experts (62.1%) believed that the electoral system was credible, as it was fully or largely accepted by all parties, while only 16.9% believed it was not. In terms of transparency, however, the majority of experts (47.6%) thought the electoral system was not transparent, while only 20.6% thought it was fully or largely transparent.

Voter registration and the display of the voter register are crucial to the success of elections. Voter registration is a fundamental citizen right that if handled improperly may constitute a starting point in electoral manipulation. Thus, in a country like Nigeria political parties see voter registration as the first step in positioning

Figure 1.16 Expert opinion on the credibility of the electoral system
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

themselves to win elections. Consequently, they go all out to mobilise their cadres for the exercise (Jinadu 1997). In most countries the electoral commission registers voters, an activity that requires adequate funding and institutional capacity of logistical and technical competence.

Some countries have very methodical and rigorous processes to register voters that are usually problem-free and generally accepted by the people. In Mauritius the electoral law provides for the appointment of registration officers and for registration to be conducted on a house-to-house basis annually. The law also requires that the population be informed when the electors' list or voter register is ready by the *Government Gazette* and at least three national dailies. Individuals may check their own names and details on the voter register, and political parties are free to ensure that their members are registered. The law provides a thorough procedure for examining complaints about omissions or incorrect details.

The experts surveyed said that the electoral law in The Gambia and Niger is credible, but more than 70% in Swaziland said that the electoral law does not ensure the independence of the electoral system

In Ethiopia the voter registration is one of the least controversial issues in the country's electoral process because it is considered credible and transparent and is generally accepted by the people. Ethiopia's electoral law allows any person who is Ethiopian, 18 years of age or older and a resident for at least two years to register. The residency requirement is waived for anyone outside the constituency for fear of political persecution, while engaging in armed struggle against the previous regime or on a duty or study leave. The National Electoral Board Manual for Election Officers details the process of voter registration. Most of the experts surveyed regard the registration of voters, voting and vote counting process to be transparent in Botswana, The Gambia and Mauritius.

By contrast the voter registration process in Ghana, Mali and Nigeria has been less tidy, with the display of the voter register marked by rancour and complaints by the electorate and political parties. In Mali one reason that the Constitutional Court

nullified the first round of the 1997 legislative elections was irregularities in the voter register. In Ghana during the 2000 elections one of the major allegations of irregularities was in the voter register. It was alleged that it was bloated with underage and multiple registrations.

Nigeria also had a major controversy during its 2003 general elections. The National Democratic Party took the Independent National Electoral Commission to court alleging that it did not follow the provisions of the electoral law on the display of the voter register. In Kenya voter registration has presented some logistical problems. First is the use of national identity cards as the basis for voter registration. Because the issuance of the card is so inefficient, many citizens do not receive their cards on time and therefore cannot register to vote. There are also problems with incorrect spelling of registered voters' names.

Most countries have structures through which post-election conflicts are resolved. In Ethiopia the electoral commission handles petitions and complaints about the conduct of elections. In Nigeria election tribunals do, and in South Africa electoral courts take charge of post-election conflicts. In Ghana, Kenya, Malawi, Mauritius and Tanzania the regular courts handle electoral litigation.

The nature of those structures is by itself not the issue, but how they can credibly resolve post-election conflicts. Their ability to do so depends on a host of factors, including their autonomy, the resources at their disposal and the conditions and general framework prescribed for those petitions to be made. In Senegal, Niger and Burkina Faso the electoral system is perceived to have effective conflict management mechanisms for electoral disputes—not the case in Cameroon and Chad (figure 1.17).

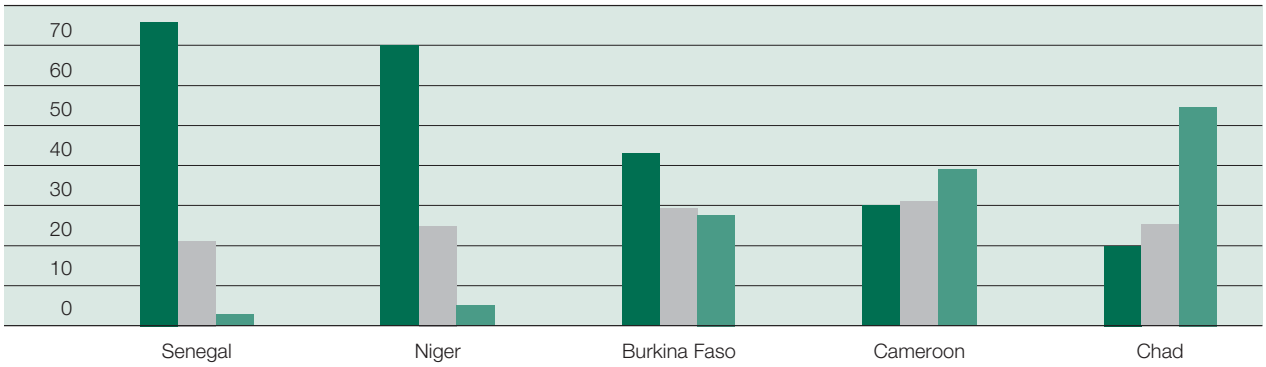
For instance, in Ethiopia grievances committees exist at all levels including polling stations at the Kebele and Woreda election offices. Because election officers at all levels chair them, they are not independent and the committees are precluded from considering complaints on which the electoral officer has already ruled. The committees are thus subservient to the election officers instead of being arbiters of litigation between the Electoral Board, voters and candidates. The Ethiopian Human Rights Commission concluded that as "the grievance committee is established by and faithful to, the ruling party, it is an obstacle to free and fair elections", adding, "as long as this partisan grievance committee continues to exist, the efforts of the opposition will be fruitless. The democratisation process too can continue only in painful weakness" (EHRCO 2001, p. 44).

In most countries the electoral commission registers voters, an activity that requires adequate funding and institutional capacity of logistical and technical competence

In Tanzania only parliamentary and local council elections can be challenged in court, not presidential elections. The electoral commission's final results cannot be challenged. The courts in Tanzania are very credible and have nullified the results of several elections of both the ruling and opposition parties, but the high cost of litigation makes challenging an election result prohibitive, especially for the poor. There is a 5 million shillings (approximately $US 4,400) deposit required to challenge a parliamentary election and a 500,000 shillings (approximately $US 440) deposit to challenge a local council election. The high cost discourages people from seeking redress on electoral matters. Furthermore, court processes are usually very slow.

Figure 1.17 Expert opinion on the degree of election control being ensured by the electoral system

Share of experts surveyed, by country (%)



The electoral system ensures effective legal action against violations and an effective mechanisms to challenge election results

The electoral system ensures fairly effective legal action against violations and an effective mechanisms to challenge election results

The electoral system rarely or never ensures effective legal action against violations and has no effective mechanisms to challenge election results

Source: ECA governance survey of experts

In Nigeria the chief justice of the federation set up election tribunals whose membership is drawn mainly from the judiciary. Although the tribunals are supposed to be independent, there have been few cases when election results were nullified.

Election outcomes in South Africa are largely considered to be free, fair and transparent with a high level of public credibility and legitimacy. There is widespread public perception and confidence that the electoral institution, the Independent Electoral Commission, is credible, legitimate and independent. The commission has received positive evaluations from a broad spectrum of the political community, including political parties and civil society organisations. It undertakes an effective voter education programme that ensures a comprehensive system of information on voting date, procedure and regulations to the diverse communities, even the remotest parts of the country. Furthermore, it conducts credible and transparent elections that are generally respected and accepted by the people.

In Tanzania only parliamentary and local council elections can be challenged in court, not presidential elections

In Mauritius, Namibia, Senegal and Tanzania the credibility of election results is also relatively very high. In Ghana and Kenya previous elections were hotly contested with serious allegations of rigging, but the 2000 and 2002 elections in both countries were considered relatively free and fair. The 2004 general elections in Ghana were a remarkable improvement on earlier ones. Many election observers, local and foreign, judged the elections to be free, fair and peaceful.

Concluding remarks

The democratic process is not at the same stage of development among African countries, and it is still fragile in many of them. Conscious efforts are needed to build on the emerging structures and practises and to consolidate the modest progress recorded so far. The culture of closed governance and state secrecy has to be reformed for democracy to thrive and the political system to engender greater confidence and legitimacy from the people. Further liberalising the media is one key to providing multiple and alternative sources of information.

The plural nature of most African countries makes it imperative for them to recognise and accommodate diversity in political systems. Related to social inclusiveness, while addressing the challenges of diversity in a multinational context such as in Africa is inevitable, there is nevertheless need for convergence between ethnic balancing and merit system in state appointments. Both elements must not be mutually exclusive; they should be complementary and mutually reinforcing. Furthermore, all political and governance bodies must institutionalize policies that guarantee gender equality. The African Union should also create and enforce a minimum standard for all African countries with respect to the level of women's political representation in elected institutions and decision-making organs. Leadership training programmes for women, especially young women, should be developed and supported to enable them to rise to the challenges of elected or appointed office. Independent women's organisations should also continue to be encouraged and supported.

The liberalisation of the political environment in Africa has opened for public debate and scrutiny several challenges related to political parties and elections. Most countries are still in a learning phase where incremental experience allows revisions, adjustments and reformulation to improve rules and processes.

There is ample evidence to suggest that political parties are weak and not well institutionalised in many African countries. Accordingly, there is therefore a strong case for the state funding of political parties. Without it, political parties become susceptible to wealthy individuals who use their financial influence to ensure firm control and perpetuate their interests. But, there must be a mix between state and private sources of funding for political parties in order to provide the financial base necessary to carry out their activities.

As the democratic process grows and is consolidated, electoral laws will have to be reformed in many African countries to reflect new realities and meet the challenges of political modernisation. To imbue confidence in the electoral challenge mechanism, the structures that manage post-election conflicts must be invigorated. Autonomy, professional competence to handle election disputes, and adequate resources (finance, infrastructure and logistics) are needed.

African countries must also begin to devise ways to finance their elections as donor funding of elections is not sustainable. Options include setting up an African Elections Fund at the continental level by the African Union for countries to subscribe to and benefit from when preparing for elections. Africa will have to look inward more in terms of the planning and financing of its elections.

As the democratic culture grows in Africa, elections would be better domesticated and results of elections less contentious. Some progress has been made in this regard as the level of acceptance of election results increases with successive elections conducted in many countries.

Notes

1 A popular constitution is the first step in the process of promoting constitutionalism. Constitutionalism is the institutionalisation of a constitution in which government is by the rule of law, arbitrariness in governance is curtailed and the fundamental rights of the people are respected.

2 Hope Musukwa—former employee of the Malawi Broadcasting Corporation made the comment. See, The Malawi Nation, September 16, 2002.

References

Adele-Jinadu, L., 1994. "Federalism and the Structure of Nigerian Federation: Some Recurrent Issues," *The Nigerian Journal of Federalism*, Vol.1, No. 2, December.

Diamond, Larry, 1999. *Developing Democracy: Toward Consolidation*, Baltimore and London: Johns Hopkins University Press.

Ethiopian Human Rights Council, 2001. "2001 Ethiopian Local Elections: A report on EHRCO's Monitoring Activities," Addis Ababa.

Hyden, Goran and Denis Venter (eds), 2001. *Constitution-Making and Democratization in Africa*, Pretoria: Africa Institute of South Africa.

IDEA (International Institute for Democracy and Electoral Assistance), 2002. *Handbook on Funding of Political Parties and Election Campaigns*, Stockholm.

Ihonvbere, Julius O., 2000. "Towards a New Constitutionalism in Africa," Occasional Paper Series #4, Centre for Democracy and Development, London.

Oloka-Onyango, Joe (ed), 2001. *Constitutionalism in Africa: Creating Opportunities, Facing Challenges*, Kampala: Fountain Publishers.

Semu-Banda, Pilirani, 2002. "No Money for 2004 Elections." *The Malawi Nation*, December 2.

Tanzania Election Monitoring Committee (TEMCO), 2000. "The 2000 General Elections in Tanzania: Report of the Tanzania Election Monitoring Committee". Dar es Salaam.

Economic governance and public financial management

2

As discussed in the previous chapter, the concern with political representation, empowerment of the people and democracy in general is a central feature of the struggle to reverse the trend towards failed states in Africa. The construction of capable states that are based on legitimacy and that can guarantee stability, peace and the efficient and effective delivery of goods and services to the people of Africa. Along with this has been the concern for good, efficient and effective economic management and corporate governance, which require effective public financial management and accountability and the integrity of the financial and monetary system, the subject of this chapter.

Several factors were behind the increased attention given to the economic side of good governance. One was the economic failure of several African countries that led the 1980s and 1990s to be characterised as the lost decade of development for Africa.

Along with the concern for good and effective political governance has been the concern for good, efficient and effective economic management and corporate governance

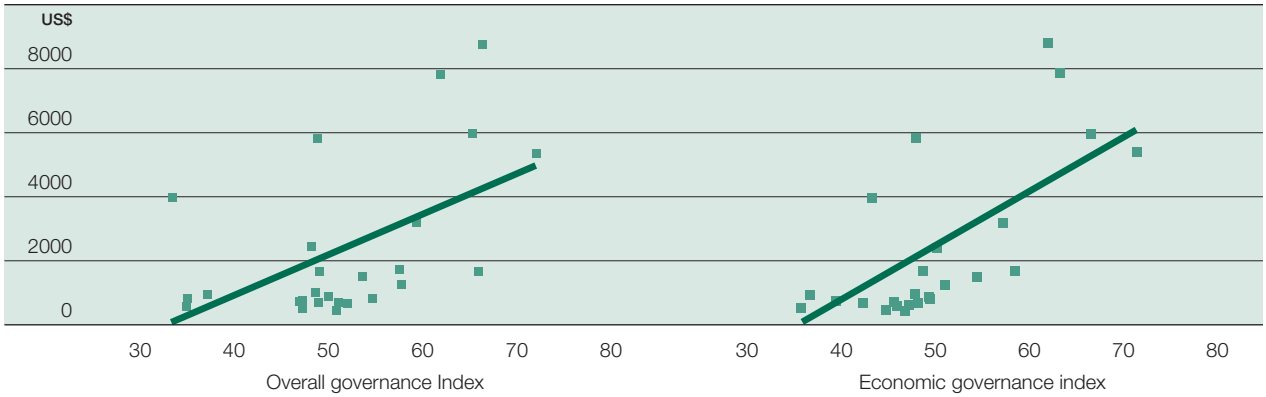
Although a view not shared by all actors, the Bretton Woods institutions concluded that bad economic policies and economic mismanagement were the root of the poor economic performance of the continent since the 1980s. Their solution is the Structural Adjustment Program, which emphasises macroeconomic stability, sound fiscal and monetary policies and management and reliance on market forces and the private sector to promote economic growth.

Since the mid-1980s African countries have been increasingly taking measures aimed at revitalizing their economies. Several key documents reflect this new perspective: the African Priority Program for Economic Recovery 1986-1990 adopted by the Organization of African Unity in 1985, the African Alternative Framework to Structural Adjustment Programme for Socio-Economic Recovery and Transformation issued by the Economic Commission for Africa (ECA) in 1989. More recently, NEPAD arrived at the same conclusion and listed good economic and corporate governance as the prerequisites for successful economic growth and poverty alleviation in Africa.

An underlying theme in all these initiatives is that good governance and economic governance are essential for economic growth, a conclusion that is supported by data from ECA and the World Bank. Countries with high GDP per capita tend to do well in overall governance and in economic governance (figure 2.1). Four countries that do particularly well are Botswana, Mauritius, Namibia and South Africa. They far outperform other countries in the study in GDP per capita, overall governance

Figure 2.1 Overall governance index and economic governance index are positively associated with GDP per capita

Average GDP per capita, purchasing power parity (1990-2002, current international $)



Source: ECA governance survey of experts and the World Bank Africa Database 2003

and economic governance. Gabon and Swaziland, however, have high GDP per capita, but their scores for overall governance and economic governance are comparatively low. By contrast, Ghana does well in the overall economic governance and in economic governance but has low GDP per capita.

Progress in public financial management and accountability

Four countries that do particularly well in economic governance are Botswana, Mauritius, Namibia and South Africa

The main concern of public financial management is how to efficiently and effectively utilise public resources to meet the needs of the community in an equitable manner. An important part is the budgetary process. The key issues to be examined in assessing the quality of the budget process are degree of discipline, efficiency in revenue mobilisation and extent of transparency, accountability and control in the tax system.

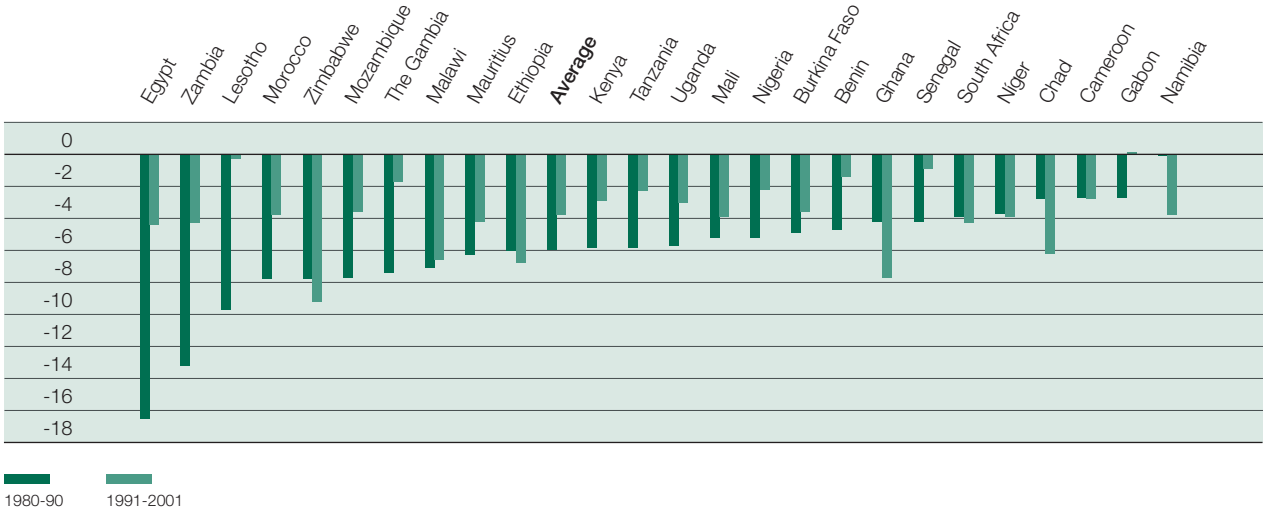
Smaller national budget deficits

To ensure budgetary discipline budget deficits must be kept under control. Doing so avoids price inflation and crowding out of the private sector from the financial market, both of which slow private sector growth and reduce business confidence in the economy.

Of 25 countries examined, 17 reduced their budget deficits and 8 worsened them between 1980-90 and 1991-2002 (figure 2.2). The improvement was highest for Egypt, Zambia and Lesotho, and the deterioration was greatest for Chad, Namibia and Ghana. Some 25 of these countries still had budget deficits in 1991-2001, with only Gabon transforming a small budget deficit in 1980-90 to a slight surplus in 1991-2002.

Figure 2.2 Government deficit as a share of GDP at current prices, 1980-2001

Annual average, by country (%)



Note: The overall deficit or surplus is defined as the current and capital revenue and official grants received, less total expenditure and lending, minus repayments

Source: ADB 2003

Medium-Term Expenditure Framework and similar schemes

African countries have put in place various arrangements to improve on budgetary discipline. Among these are Zambia's Budget Framework Paper, Kenya's Budget Realisation Program and Public Investment Program and Namibia's three-year rolling budget. A more ambitious and comprehensive scheme is the Medium-Term Expenditure Framework (MTEF), which several African countries have embraced.

Of 25 countries examined, 17 reduced their budget deficits and 8 worsened them between 1980-90 and 1991-2002

In principle, it links policymaking, planning and budgeting, thereby allowing expenditures to be driven by policy priorities and disciplined by budget realities, injecting a medium-term perspective and allowing for policy choices that enhance long-term development. The MTEF is a rolling budget that covers the current budget year and the next two budget years. It contains a macroeconomic framework with a forecast of revenues and expenditures in the medium term, a multiyear sectoral programme with cost estimates, a strategic expenditure framework, a plan for allocating resources among sectors and detailed sectoral budgets.

The advantages of the MTEF include improved macroeconomic stability through fiscal discipline, better intra- and inter-sectoral resource allocation, effective prioritisation of expenditures on the basis of clearly articulated socioeconomic programmes, greater budgetary predictability, more efficient use of public finances, greater accountability for the outcomes of expenditures and greater credibility in budgetary decision-making.

Two committees in Malawi's parliament are responsible for tracking government expenditures and holding the executive accountable. But, both have complained that the MTEF does not provide them adequate information on its results due to poor coordination between the ministries and the staff responsible for the budget, poor financial management and ineffective penalties and incentives for enforcing discipline. To rectify this, better use of the MTEF and basic training on public finance for ministers, members of parliament and financial control officers have been recommended. The Poverty Reduction Strategy is also to be reviewed each year, and each minister is to make annual reports to parliament on the achievement of specific objectives in the programme.

The MTEF is widely regarded as an important and effective mechanism for ensuring budgetary discipline as it links policymaking, planning and budgeting

In 2002 the World Bank undertook a comprehensive and empirical study of the MTEFs under implementation in Africa. The study compared fiscal deficit as a share of GDP before and after introduction of the MTEF by Ghana, South Africa, Tanzania and Uganda and concluded that while South Africa and Tanzania had recorded slightly smaller fiscal deficits after introduction of the MTEF, there was not a link between MTEFs and reduced fiscal deficits. By contrast, the data did show that the introduction of MTEF in South Africa, Tanzania and Uganda resulted in some sectoral reallocation, although it was limited to only a few subsectors, such as health and justice in South Africa, social services in Tanzania and education in Uganda. Ghana's MTEF did not result in any sectoral reallocation.

In addition, the study found no link between the introduction of the MTEF and greater budget predictability as measured by the Budget Deviation Index in Tanzania and Uganda (the only countries for which data were available), even though there was some indication that Uganda was moving in the right direction. Finally, for political accountability, in addition to anectodal evidence, the study found MTEFs published in Ghana, Kenya, South Africa,Tanzania and Uganda had led to more involvement of civil society in public expenditure management (box 2.1).

The study suggests two main reasons for the disappointing results of African countries from the introduction of the MTEF. First is that most of the experiments are recent, with the oldest being Uganda's 1992 MTEF. The study suggests that at least 12 years are needed before the MTEF's impact can be realistically assessed. It is necessary to wait several more years before a meaningful assessment of the

Box 2.1 Introduction of the MTEF enhances the participation of civil society in public financial management in South Africa

The introduction of the MTEF provided civil society an opportunity to play an important role in public financial management. In South Africa, where the MTEF must be debated and approved by parliament, the Congress of South African Trade Unions, the leading trade union federation with nearly 2 million members, fully participated in the 2000 debates on the MTEF and submitted written comments to the parliamentary Select Committee on Finance. A spokesperson for the trade union said that the MTEF could significantly enhance the public's participation in the budgetary process. The South African Chamber of Commerce also expressed support for the MTEF and its contribution to making public expenditure management participatory and inclusive.

Source: South Africa country report

impact of the MTEF in other African countries can be conducted. Second is that not all of the MTEFs evaluated were fully operational. Based on their general technical and organisational design features, only South Africa and Uganda have fully operational MTEFs, while Ghana, Kenya and Tanzania's are intermediately operational. The study also found that the operational MTEFs do not closely resemble textbook cases, because of inherent difficulties introducing full-fledged MTEFs in many developing countries. Other factors inhibiting the positive impact of MTEFs are failure to take account of initial country conditions in basic aspects of budget management and failure to pay attention to the political and institutional aspects of the reform process.

For most African countries taxes, especially indirect taxes, are the most important source of revenue

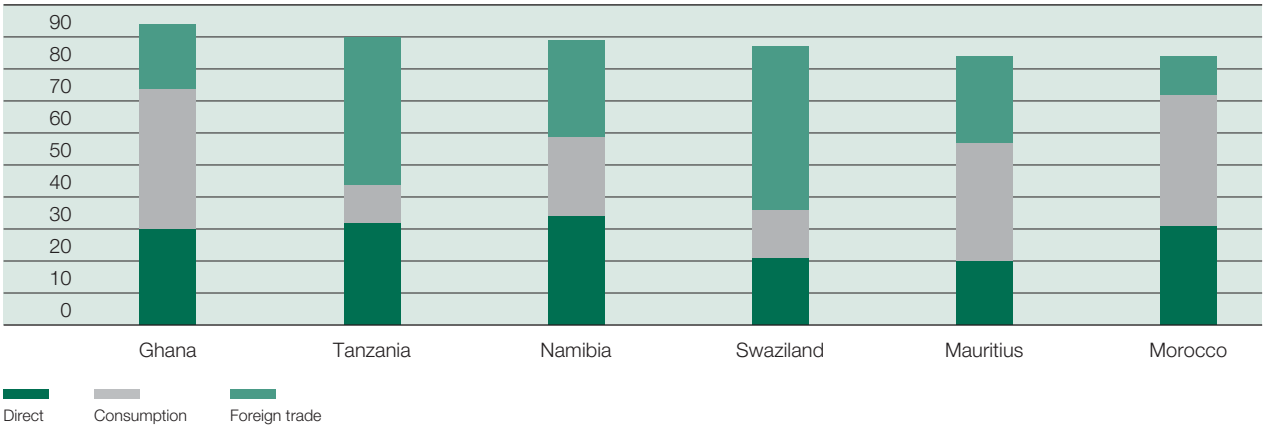
Indirect taxes and rent from depleting resources

Efficiency in revenue mobilisation is indicated in part by the variety and nature of the sources of public revenue. External grants account for a substantial part of both the recurrent and capital budgets of several African countries, and in a few cases income from public enterprises is another important source of public revenue (although income from public enterprises is declining because of the increasing trend towards privatisation). For most African countries taxes, especially indirect taxes, are the most important source of revenue. Indirect taxes are considered regressive because they tend to affect all individuals indiscriminately, and have a greater impact on poor people due to their propensity to consume a larger share of their income. In addition, relying on indirect taxes indicates a narrow tax base and shows a failure to bring the informal sector into the formal sector (thereby increasing tax revenue).

In 2000 indirect taxes accounted for 42.7% of revenue for Africa as a whole and 45.1% for Sub-Saharan Africa. Several countries rely on consumption and foreign trade taxes for 70% or more of government revenue (figure 2.3). Other countries that rely heavily on indirect taxes are Benin and Burkina Faso.

Figure 2.3 High dependence on indirect taxes for public revenue, latest year available[a]

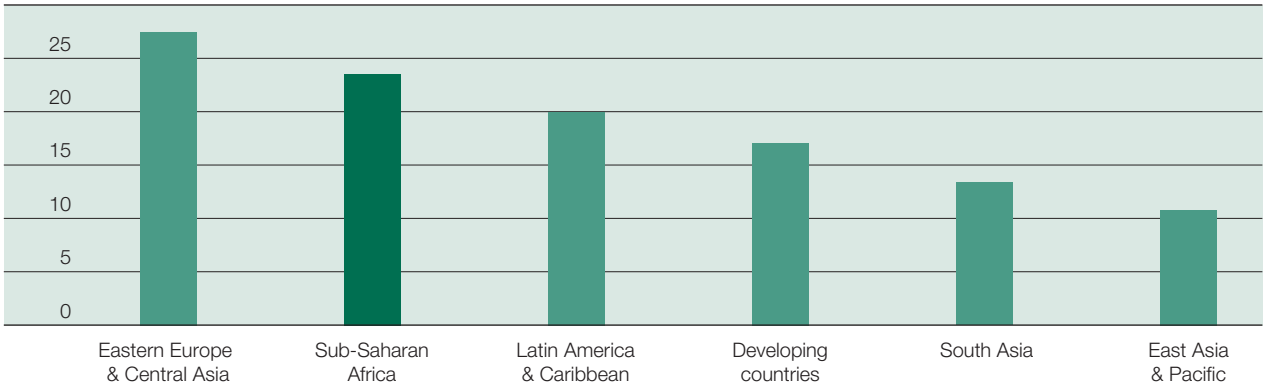
Share of public revenue, by country (%)



Notes: a. Or average of latest years available. Figures do not add up to 100% because of public revenue from other sources

Source: National country reports

Figure 2.4 Government revenue as a share of GDP, 2001
Annual average, by region (%)



Source: World Bank 2004

In general, government revenue in African countries accounts for a rather large share of domestic product

Another main source of public revenue for many African countries is rent from non-renewable resources, such as oil, diamonds and other minerals. These resources are being depleted and income from them tends to be highly volatile, which results in a highly volatile budget. In addition, having a substantial income from these sources means broad-based development, good economic management and overall economic and political governance are often neglected.

In Nigeria revenue from oil as a share of total government revenue were 70.6% in 1995, 78.6% in 1996, 71.5% in 1997, 70% in 1998 and 78.3% in 1999. In Botswana revenue from mineral resources rose from 11.1% in 1973/74 to 59% in 1988 and averaged 54% between 1997/98 and 2002/03. By comparison, revenue from foreign trade within the Southern African Customs Union averaged 21% between 1973/74 and 2002/03 but fell to an average of 14.2% between 1997/98 and 2002/03.

Domestic product as revenue

An important indicator of resource mobilisation is government revenue as a share of GDP. In general, government revenue in African countries accounts for a rather large share of domestic product, meaning the private sector accounts for less. Balance is needed in government revenue to avoid crowding out the private sector. Government revenue as a share of GDP in Sub-Saharan African countries is far higher than that in developing countries, Latin America and the Caribbean, South Asia and East Asia and the Pacific (figure 2.4). Only in Eastern Europe and Central Asia does government revenue as a share of GDP exceed that of Sub-Saharan Africa because of the legacy of command economies.

Table 2.1 Government revenue as a share of GDP for selected African countries, various years

Country	Share of GDP (%)	Year(s)
Botswana	43.4[a]	1990–2003
Lesotho	43.0[a]	1998–2003
Morocco	30.2	2000
Nigeria	28.1	1999
Kenya	25.0	2001/02
Ethiopia	17.9	2000/01
Tanzania	12.2	2002

Note: a. Data are the average for the period indicated

Source: National country reports

The latest available data show wide variation in government revenue as a share of GDP among African countries (table 2.1). Botswana and Lesotho far exceed 23.6%, the average of government revenue as a share of GDP for Sub-Saharan Africa. Ethiopia and Tanzania, however, are far below this average.

Revenue mobilisation targets

An important indicator of success in resource mobilisation is the degree to which revenue collected meets the amount targeted. Revenue shortfall is a major reason for budget deficits and lack of budgetary discipline. African countries need to increase the efficiency of their resource mobilisation in order to finance their ambitious economic development programmes.

Benin, Malawi, Nigeria and South Africa have recently succeeded in meeting or exceeding revenue collection targets. South Africa exceeded its consolidated revenue for 2001/02 by 6% due to reforms in administration of the tax system (box 2.2).

Box 2.2 Reforms in the administration of the tax system in South Africa lead to efficiency in resource mobilisation

Responsibility for resource mobilisation in South Africa is in the hands of the South African Revenue Service, created in 1997 as an independent agency responsible for tax collection and administering the tax system. One of its early actions was a complete overhaul of the tax administration and information system. Tax regulations and procedures were published and disseminated widely to assist taxpayers in completing their tax returns, and an extensive media campaign aimed to increase public awareness of tax rules and procedures to enhance compliance and transparency and create a sense of equity in the tax system. Thanks to these and other efforts, the South African Revenue Service has achieved outstanding gains in efficiency, broadened the tax base and increased compliance with the tax legislation. One measure of success is that the consolidated revenue for 2001/02 was 6.1% greater than the 2001 budget's estimate. The South African Revenue Service is projecting that this gain in revenue collection will be sustained in the medium to long term.

Source: South Africa country report

However, some African countries, including Burkina Faso, Ghana and Mauritius, are failing to meet their targets for resource mobilisation. Deficiencies in the tax collection system, such as tax evasion, corruption, the abuse and misapplication of provisions on tax exemption, political interference and the low capacity of tax collection agencies are at the root of these failures. The revenue mobilisation system in Senegal is also said to be inefficient, discriminatory and inequitable.

Tax evasion, corruption and lack of transparency in the tax system are not only ethical issues, but they strike at the heart of good public financial management

Tax evasion, corruption and lack of transparency in the tax system

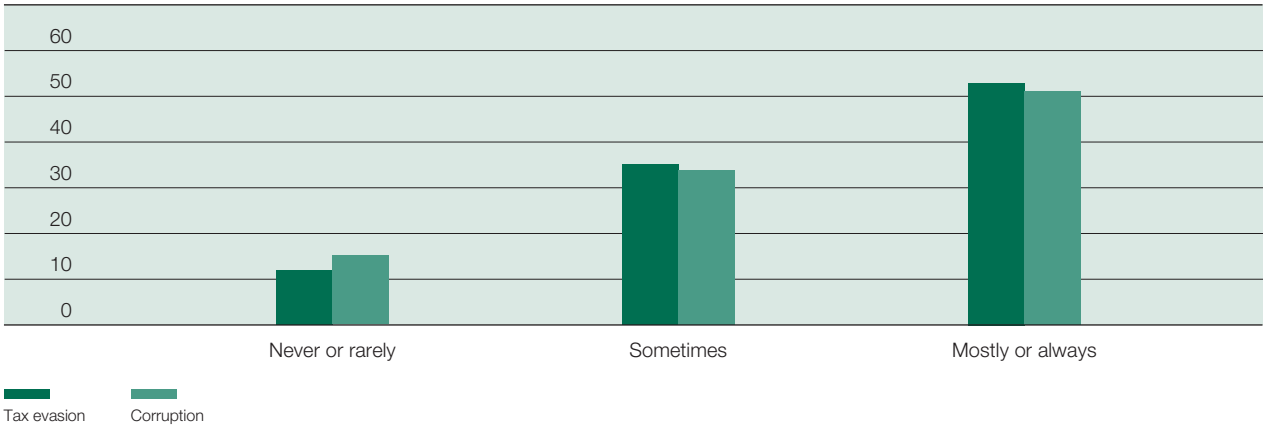
Tax evasion, corruption and lack of transparency in the tax system are not only ethical issues, but they strike at the heart of good public financial management. They deprive governments of desperately needed resources for development, engender criticism and disillusionment with the process of economic management and can lead to political alienation and the withdrawal of legitimacy and support for the regime, in turn triggering political tensions and instability. Tax evasion and corruption are like cancers, which, if left unchecked, can quickly spread and destroy the moral fiber of society as well as its economic and political structures and processes. Vigorous action by African countries is therefore required to combat this menace.

The results of the survey of experts on these questions indicate that these problems remain significant in many African countries. Nowhere did more than a half of the experts surveyed say that tax collection is never or rarely affected by tax evasion. The best performers on this measure are Namibia and Gabon. In 18 countries more than a half said that tax collection is mostly or always affected by tax evasion. The average for all countries for the share of experts surveyed who said that tax collection is never affected by tax evasion was about 12%, and for those who said it is mostly or always affected by evasion it was 53% (figure 2.5).

Corruption is another major problem affecting tax collection in Africa. Only some 15% of the experts surveyed in all 27 countries said that tax collection is never or rarely affected by corruption. Only in Botswana and Namibia did more than a half

Figure 2.5 Expert opinion on tax evasion and corruption in the tax system

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

give this reply. The average share of experts surveyed who said that tax collection is mostly or always affected by corruption was 51% (figure 2.5). And more than a half of the experts in 16 countries said that tax collection is mostly or always affected by corruption.

The opinions of the experts are largely supported by the results of the household survey conducted in 16 countries. The survey found that tax officials are second only to police officers in terms of corruption. An average of 42% of households surveyed across all 16 countries said that tax officials demand bribes for services rendered. In Benin, Chad, Gabon, Kenya, Nigeria, Uganda and Zimbabwe more than half of households surveyed said that tax officials demand bribes for services rendered. Only in Namibia and South Africa was this value below 20%.

An average of 23% of all experts surveyed said that the tax system is highly or largely efficiently managed, compared with about 42% who said that it is poorly managed

An average of 23% of the experts surveyed said that the tax system is fully or mostly transparent, compared with 42% who said that it is rarely or never transparent. Only in Botswana, Mauritius, Namibia and South Africa did more than 50% have a great deal of confidence in the transparency of the system. At the other extreme, more than 50% of the experts in Cameroon, Chad, Egypt, Ethiopia, Kenya, Mali, Niger, Nigeria and Uganda had little or no confidence in its transparency.

As might be expected, countries that have transparent tax systems tend to have less tax evasion and less corruption in the tax system. On the other hand, countries that perform poorly in one area tend to perform badly in the other two. Botswana, Mauritius, Namibia and South Africa perform well in all three areas.

Ghana and Lesotho have not excelled at promoting transparency and addressing corruption and evasion in their tax systems. But their initiatives to correct the situation may be useful models for other African countries (box 2.3).

Efficiency of the tax system

Efficiency in the management of the tax system is important for enabling the public sector to mobilise the resources required for economic development. It also engenders confidence and trust in public financial management, which is an important component of good governance.

In only two African countries (Namibia and South Africa) did more than a half of the experts surveyed say that the tax system is highly or largely efficiently managed. In Botswana and Mauritius a little over 40% of the experts surveyed expressed a similar view. In nine countries, more than half reported that the tax system is poorly managed. An average of 20% of all experts surveyed said that the tax system is highly or largely efficiently managed, compared with about 42% who said that it is poorly managed.

Most African countries still have to improve the management of their tax collection system. The correlation between high-scoring and average-scoring countries on this measure and those on the measures of transparency and the impact of tax evasion and corruption on the tax system is again striking and indicative of the fact that they tend to go hand in hand, determined by the same factors. Four countries that

Box 2.3 Ghana and Lesotho take decisive measures to fight tax evasion

In a 2000 survey on governance in Ghana, Customs, Excise, and Preventive Services was rated the most corrupt public agency. A series of measures was included in the 2002 budget to eliminate corruption.

- Introduce automated customs clearing procedures.
- Combat smuggling at the point of sale for seven specific products.
- Intensify tax collection efforts and use all legitimate means to recover all outstanding debts, which stood at 97 billion cedis (about US$12 million).
- Address factors that inhibit effective tax collection in the Revenue (Amendment) Bill of 2002 and in the Internal Revenue (Amendment) Bill of 2002.
- Expand the activities of the Value Added Tax Secretariat to cover the taxable services provided by the banking and finance sector.

In Lesotho the measures outlined by the Ministry of Finance to combat tax evasion dealt mainly with enforcement measures:

- Have zero tolerance for tax evasion.
- Strictly apply existing laws.
- Increase enforcement activities.
- Establish specialist teams that move around the country to root out illegal activities.
- Strengthen border controls.
- Punish officials guilty of bribery and corruption.
- Issue and monitor compliance with a code of conduct for all officials.
- Exclude from government contracts companies that fail to demonstrate that their taxes are in order.
- Improve the standard of service provided by the authorities to legitimate business and trading communities.
- Establish the Lesotho Revenue Authority and put the three tax departments under one board of directors to improve flexibility in operations, thereby increasing efficiency and effectiveness in tax collection and offering better services to taxpayers.

Source: Ghana and Lesotho country reports

had high or average scores on all four measures are Botswana, Gabon, Namibia and South Africa.

The overall picture of the tax system in Africa is one of progress in reducing budget deficits, meeting resource mobilisation targets and managing the tax system more efficiently. However, while efforts are being made to broaden the tax base and reduce tax evasion, corruption and lack of transparency in the tax system, many countries need to make more efforts to achieve satisfactory results in these areas.

Equitability of the tax system

Wide disparities exist in the ratings of the experts surveyed on equitability of the tax systems in the countries included in the study (table 2.2, figure 2.6). In only three countries did more than a half of the experts surveyed say that the tax system is always or mostly equitable. In 14 countries, less than a quarter gave the same answer.

The tax system in many African countries is perceived to be inequitable and is a serious problem that tends to encourage tax evasion and corruption. Urgent action is therefore required as part of a broader effort to address the shortcomings

Table 2.2 Expert opinion on the equitability of the tax system

Share of experts that said, "The tax system is always or mostly equitable"

More than 50% of experts surveyed	25–50% of experts surveyed	10–25% of experts surveyed	Less than 10% of experts surveyed
Botswana, Namibia and South Africa	Benin, Burkina Faso, Cameroon, Gabon, Ghana, Lesotho, Mauritius, Morocco, Mozambique and Zimbabwe	Egypt, The Gambia, Kenya, Malawi, Mali, Niger, Nigeria, Senegal, Swaziland, Tanzania and Uganda	Chad, Ethiopia and Zambia

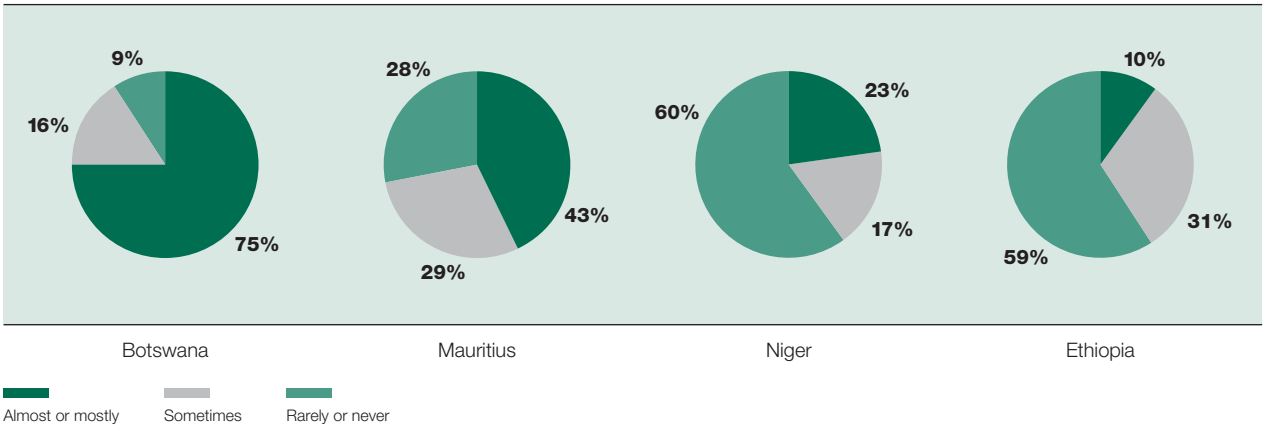
Source: ECA governance survey of experts

in the system of resource mobilisation, including the narrow tax base, the lack of transparency, the high degree of tax evasion and corruption in the tax system and inefficiency in the management of the tax system.

Budgetary discipline, efficient resource mobilisation and equity in public expenditures and resource mobilisation are linked with each other and with transparency in the fiscal system and the effectiveness of arrangements for auditing public expenditures. The state of fiscal transparency and auditing in Africa is examined next.

Figure 2.6 Expert opinion on the equitability of the tax system in Botswana, Mauritius, Niger and Ethiopia

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

International initiatives to strengthen fiscal transparency and auditing

In a globalised world where crisis in one area may ripple throughout the international financial system fiscal transparency has become a universal concern, and many international initiatives have been taken to ensure that countries abide by internationally recognised standards of good fiscal practice. One of these initiatives is the

International Monetary Fund (IMF)'s Code of Good Practices on Fiscal Transparency, which contains four key elements:

- The responsibilities of government should be clear and publicly disclosed.
- Comprehensive and reliable information on fiscal activities should be made available to the public.
- The process of preparing, executing and reporting on the budget should be open and widely publicised.
- Independent arrangements and procedures must exist to confirm the integrity of the information made available to the public.

Public procurement is a vital part of the overall fiscal system, and transparency in this area is essential for good public financial management and for public trust and confidence in the integrity of the government. The procurement system in most African countries after independence lacked transparency, had outdated procedures and experienced a high degree of corruption and rent seeking. However, several African countries have made progress in introducing greater transparency in their fiscal systems.

The procurement system in most African countries after independence lacked transparency, had outdated procedures and experienced a high degree of corruption and rent seeking

Botswana has an open and systematic procedure for consulting stakeholders to ensure that all relevant interests and views are considered in formulating effective, equitable and transparent policy and legislation. Tripartite commissions hold meetings and take evidence around the country on many key areas of policy. The three main consultative bodies are the Rural Employment Council, the National Employment, Manpower and Incomes Council and the High-Level Consultative Council. Botswana has clearly defined rules and procedures for public procurement that are implemented in a transparent and effective manner and that are well monitored. The Public Procurement and Asset Disposal Board enhances the prudent, efficient and accountable management of public expenditures.

Namibia has a fairly transparent fiscal system thanks to an elaborate budget procedure to ensure that the public is fully informed about the process and content of the budget and that various ministries and government agencies are accountable (box 2.4). The Government Tender Board is responsible for the rules and procedures on public procurement and for monitoring whether they are implemented effectively and transparently.

Until recently, there was little fiscal transparency in Egypt. However, since the new cabinet took office in October 1999, considerable progress has been made towards greater transparency. The Ministry of Finance has been publishing data and information on economic and financial performance and on the domestic and external debt of the country. It has also been preparing a consolidated budget and compiling data on particular sectors, though these documents are not available to the public. The government is adhering to the IMF's Special Data Dissemination Standard and reinforcing compliance with the IMF's Code of Good Practices on Fiscal Transparency.

Tanzania has also been making progress in improving fiscal transparency, following several measures by the government: implementation of the Comprehensive

Box 2.4 Namibia's measures to promote fiscal transparency

Namibia has a detailed and elaborate procedure to ensure transparency and credibility in its budget system:

- A budget calendar is prepared for the ministries to plan their budgeting process and to inform the public at large.
- A budget framework is prepared to analyse the prevailing financial situation and provide background and guiding information to the cabinet on the assumptions and economic and financial situation that underlie the budget.
- A Macroeconomic Framework is prepared by the National Planning Commission, with inputs from the Ministry of Finance and the Bank of Namibia, which provides an in-depth analysis of the world, regional and domestic economies and projections on the trends of the domestic economy for the next five years.
- A zero-based budget approach obliges each ministry to justify each of its requests.
- Budget hearings are held for the ministries to justify their requests.
- An Analytical Framework of the budget is prepared with gender analysis, sectoral analysis, performance criteria and a rolling three-year budget.
- The budget is managed by computerisation, Monthly Treasury Authorisation Warrants and a committee on cash flow management with representatives of the Ministry of Finance and the Bank of Namibia.

It is on the basis of these arrangements that the experts surveyed rated the government of Namibia highly in terms of availability and accessibility.

Source: Namibia country report

Integrated Financial Management System, institution of the Public Expenditure Review Process on an annual basis since 1997, adoption of a new legal framework for fiscal management and procurement, greater controls on commitments and expenditures since 2001, quarterly publication of the amounts and timing of budget transfers to spending agencies, of revenues and expenditures by local governments, and of corruption by ministries. Transparency in procurement is also being addressed after the 1996 report of the Presidential Commission of Inquiry Against Corruption revealed several shortcomings in public procurement.

African countries that still have to make appreciable progress in fiscal transparency are Ghana, Kenya, Lesotho, Nigeria, Senegal, Swaziland and Zambia.

There has been some improvement in the degree of transparency in the management of the economy in Ghana, but weaknesses remain. One example is the government's order of 100 Peugeot cars for the police. The order lacked parliament's approval and became public knowledge only after the first vehicles had arrived. Another example is the confusion over the cost and origin of the presidential jet. Similar problems are said to be common at both the local and central government levels.

During the period of military rule in Nigeria, there were no clearly defined rules and procedures for public procurement, and contracts were awarded largely on the basis of parochial and other narrow self-interests. Since coming to power, the civilian government has issued new policy guidelines for awarding contracts by ministries and state-owned enterprises. The former Departmental Tenders Board and the Federal Tenders Board have been replaced by the permanent secretaries and Ministerial

Tenders Board, and their rules, procedures and powers to award contracts are clearly stipulated. The Public Procurement Commission was also created to be the highest-level policymaker on all aspects of procurement and the award of contracts in the public service. What impact these changes will have on transparency in the public procurement and fiscal systems remains to be seen.

Fiscal fraud is reportedly widespread in Senegal, with the country ranked 76 of 122 countries in terms of corruption. The most corrupt institutions are in the fishing industry and customs services.

The failure of several African countries to make significant progress in public procurement is compounded by shortcomings in the systems of internal control and in the supreme audit institutions

Institutions and arrangements for internal control and audit

The failure of several African countries to make significant progress in public procurement is compounded by shortcomings in the systems of internal control and in the supreme audit institutions. However, most governments have recognised the importance of these offices and provided for their creation in their constitutions. The main responsibility of the controller and auditor general is to ensure that public funds are used in the manner and for the purposes intended by the legislative body. It is therefore very important for these two offices to be fully independent of the executive and provided with the resources required to accomplish their tasks.

In most cases the controller and auditor general are appointed by the president, sometimes in consultation with or on the nomination of the prime minister. Despite the role of the executive in their appointments, the constitutions and other legal texts in most African countries provide for their independence and security of tenure. In addition, the texts empower the officeholders to enquire into all aspects of public accounts, including the authority to request all relevant documents, question all concerned officials and hold public hearings. On the whole, African countries have generally respected these provisions.

In Kenya, despite reports by the controller and auditor general that were highly critical of the executive, there has only been one officeholder for each of these positions since independence. A main criticism of the system though is that frequent changes in the management of the treasury make internal control extremely difficult. In addition, because of executive dominance, the parliament has been unable to enforce the findings and recommendations of the controller, auditor general and parliamentary committees.

In Mali the functions of controller are exercised by four agencies, all of which had their support units originally in the presidency and in the office of the prime minister starting in 2000. This deprives them of the required independence from the executive. The Audit Section of the Supreme Court, by contrast, exercises the auditing functions.

Arrangements for internal audit vary greatly by ministry in Morocco. The Ministry of Equipment has an internal audit unit attached to the secretary-general, while the Department of Housing has a Permanent Audit Unit within the General Inspectorate. Other ministries and departments, however, lack such arrangements. Beyond the ministerial and departmental levels are a host of institutions that exercise oversight responsibilities, including parliamentary commissions, the Accounts Court, the

General Inspectorate of Finance, government commissions, expert commissions, accounts commissioners and external auditors.

In Burkina Faso, Gabon and Senegal the most important institution for monitoring government finance is the Court of Accounts. The major weakness of these courts is that they often lack the means and independence necessary for them to do their job effectively.

Botswana has strict systems of accounts and audit that have been quite effective in ensuring that public resources are properly used and accounted for. Individual units make regular reports to the auditor general who is mandated by the constitution to submit regular reports to the executive and parliament on public accounts to ensure that laws, financial regulations, instructions and directives on public funds and assets are followed and that the best financial and performance practices are adhered to. Another important institution for ensuring strict adherence to proper financial management practice is the Directorate on Corruption and Economic Crime (box 2.5).

In Burkina Faso, Gabon and Senegal the most important institution for monitoring government finance is the Court of Accounts, though they often lack the means and independence necessary for them to do their job effectively

The Public Finance Management Act, adopted by South Africa in 1999, details the responsibilities of, and the relationship among, the political and administrative heads of departments. The act also ensures that all government institutions and public entities have accounting officers who are responsible for budgetary control and subject to stringent reporting requirements, such as the preparation of financial statements that have to be audited and submitted with an annual report within seven months of the end of the fiscal year. The executive authorities are required to observe budgetary limits, take into account monthly financial reports and issue directives with financial implications in writing. The minister of finance is responsible for making regulations on procedures to be followed in cases of financial misconduct, and the act stipulates that offences are punishable by fine or imprisonment of up to five years.

Box 2.5 Botswana fights corruption through the directorate on corruption and economic crime

Botswana's Directorate on Corruption and Economic Crime was established in 1994 as a result of concern at the increasing levels of corruption and economic crime in the country, as evidenced by scandals at the Botswana Housing Corporation and the National Development Bank. The directorate is an independent department under the state president and has a strong mandate to receive and investigate all complaints involving corruption, root out corruption and deter public and private individuals from engaging in corruption. Its main functions are to investigate and prosecute offenders, to educate the public on the evils of corruption and to prevent corruption and economic crime. In addition to its own activities, the directorate assists other law enforcement agencies in investigating public officers suspected of dishonesty and helps government departments, local authorities and state-owned enterprises to identify weaknesses in their operating procedures that may create opportunities for corruption and to develop systems to better enable these institutions to detect and prevent corruption. From its inception to the end of 2001 the directorate received 9,772 reports of alleged corruption and investigated 2,737 of them. It has been responsible for convicting senior officials, heads of state-owned enterprises and chief executives of private companies. But it has been criticised for not being aggressive enough in bringing the "Big Fish" to book, a criticism that it denies.

Source: Botswana country report

The main weakness in the internal control arrangements in Mauritius is that several units within the ministries fail to submit the required detailed accounts to the director of audit. The director of audit has pointed out several lapses in the internal control and audit system, such as the failure to credit 10.3 million rupees (about US$ 350,000) collected as extra duties to government revenue and the fact that some public funds are not subject to parliamentary accountability. A case in point is a trust fund established in 1995 with 100 million rupees—it has never submitted its account to the director of audit and has therefore not been accountable to parliament.

Parliamentary review and oversight, usually the Public Accounts Committee, are effective in some countries—but not all

A final weakness in undertaking the auditing function in many African countries is that the institutions responsible lack the staff and other resources required to do a good job. Various estimates have been given of the amount of audit work completed in a year and range from 15% in Mali to 50% in Malawi. In several cases statutory bodies were not audited. There are also reports of long delays in completing and submitting the auditor general's report in Ghana, Kenya and Zambia.

Effective followup on the auditor general's report

In most African countries the auditor general's report is sent to parliament for discussion and action. There are sometimes specific provisions and deadlines for this. In almost every case a special parliamentary committee, usually the Public Accounts Committee, examines it in detail. In Tanzania the report is also submitted to the Local Authorities Accounts Committee, and in Ethiopia the reports of the various regional auditors are referred to their respective regional councils. Ethiopia requires that the report of the federal auditor general be sent to the respective government offices, which have 30 days to take corrective action. Similarly, in South Africa after the auditor general's report has been laid on the table in parliament, the affected parties are given 60 days to take remedial action. In Swaziland the auditor general's report is examined by the Public Accounts Committee of the House of Assembly, which comprises 12 members, none of whom could be a minister. The assembly has broad powers to follow up on the auditor general's report, its deliberations are said to be transparent, and the report is published in the local media.

Parliamentary review and oversight are effective in some countries—but not all. In Mauritius the comments and recommendations of the auditor general are taken seriously and acted on, while in Tanzania the government implements only some of the auditor general's recommendations. In Zambia serious fiscal irregularities are routinely documented and reported by the auditor general, but they go unheeded. Recommendations of punitive action are rarely taken against offenders. Cases in point are the improprieties and financial abuse in the Zambia Electricity Supply Corporation, the Food Reserve Agency and several local authorities.

Several African countries have taken steps to ensure that the parliamentary committees examine the auditor general's report in an objective, professional and nonpartisan manner. In Nigeria the composition of the parliamentary oversight committee is based on the competence, discipline and educational background of each member in order to introduce more objectivity in the discussions and compensate for the lack of staff available to the committee and the parliamentarians in carrying out their responsibilities. In the Standing Committee on Public Accounts of the South African

Parliament, which examines the report, members work across party lines to ensure objectivity and transparency. Mauritius has taken steps to institutionalise arrangements for ensuring bipartisanship in the discussion of the auditor general's report in parliament. In some instances the followup action required is prosecution by the attorney general for corruption. Specific structures have been put in place to ensure effective followup on the auditor general's recommendations.

On the whole, the performance of African countries in this area is negative, mostly due to the lack of resources and procedures in the auditor general's office, deficiencies in the powers and exercise of oversight functions by parliament and a lack of cooperation by the executive branch of the government.

Mauritius has taken steps to institutionalise arrangements for ensuring bipartisanship in the discussion of the auditor general's report in parliament

Given the reported delays in receiving the auditor general's report, the time available for parliamentary oversight is too short to permit a thorough and professional job. An extreme case is Mali, where in 1996 the Audit Section of the Supreme Court submitted audited accounts for 1993, 1994 and 1995—for the first time since independence in 1960. Other shortcomings are lack of clearly established and efficient mechanisms for monitoring the financial activities of ministries, departments and agencies, and the reluctance of auditors to name the individuals guilty of lapses and malpractises.

One important element in ensuring the effectiveness of arrangements and provisions for internal and external audit is the extent to which the legislature holds the executive accountable. In only 5 of 27 countries did more than 50% of the experts surveyed say that the legislature is always or mostly effective in holding the executive accountable (table 2.3). In 11 countries 25–50% of the experts surveyed gave the same response, and in the remaining 11 countries, less than 25% did.

Given the executive's tendency to dominant the legislative branch in African countries, follow-up action by the executive, especially with respect to recommendations for criminal action against well-placed individuals, has been infrequent. The main problem seems to lie with the executive and its lack of genuine commitment to fiscal transparency and accountability. This is part and parcel of the larger problem of political representation, institutional checks and balances and the rule of law and law enforcement discussed elsewhere in this report.

Greater integrity in the monetary and financial systems

The importance of integrity in the monetary and financial systems, a conducive environment for private sector–led economic growth and an effectively functioning market economy cannot be overemphasised. In the age of globalisation, integrity in the monetary and financial systems has become an international concern. Many steps have therefore been taken at the international level to preserve the integrity of the monetary and financial systems and strengthen the effectiveness of regulatory bodies.

A key element of transparency is the timely availability of accurate, comprehensive and detailed information on who makes decisions, how they are made, the

Table 2.3 Expert opinion on the effectiveness of the legislature in holding the executive accountable

Share of experts that said, "The Legislature is always or mostly effective in holding the Executive accountable"

More than 50% of experts surveyed	25–50% of experts surveyed	10–25% of experts surveyed	Less than 10% of experts surveyed
Benin, Ghana, Mauritius, Namibia and South Africa	Botswana, Gabon, The Gambia, Lesotho, Mali, Morocco, Mozambique, Niger, Nigeria, Senegal and Tanzania	Burkina Faso, Cameroon, Chad, Egypt, Malawi, Swaziland, Uganda, Zambia and Zimbabwe	Ethiopia and Kenya

Source: ECA governance survey of experts

objectives being pursued, the outcomes expected and how the structures are constituted, operate and relate to each other.

A key element of transparency is the timely availability of accurate information on who makes decisions, how they are made, the objectives being pursued, the outcomes expected and how the stuctures relate to each other

An important international initiative to address transparency in the global monetary and financial system is the Financial Stability Forum, which regularly brings together central bank governors, finance ministers and other financial regulators to exchange information and ideas on how to improve international financial stability. The forum adopted key standards for sound financial systems that are now universally accepted as critical for good practice.

In addition, several international donors, notably the IMF and the World Bank, have been providing countries assistance to strengthen their monetary and financial systems. In April 2002 a group of donors, consisting of the IMF, the World Bank, the U.K. Department for International Development, the Canadian International Development Agency and Switzerland's State Secretariat for Economic Affairs established the Financial Sector Reform and Strengthening Initiative to provide financial and technical assistance to developing countries that enables them to engage in comprehensive institutional reforms that strengthen and significantly improve their monetary and financial systems.

Progress in enhancing transparency

Several African countries have increased the transparency of their monetary and financial systems. However, while most of the central banks in Africa have independence and autonomy on paper, in practice their independence is sharply curtailed. This and the weak capacity of the regulatory and supervisory institutions have limited the effectiveness of these institutions.

The Bank of Botswana ensures transparency through the annual publication of a monetary policy statement that outlines the objectives and targets of its monetary and anti-inflation policies. Adjustments to the Bank rate are publicly announced, explained and justified. The exchange rate policy is also fully explained and justified, and information is made available on the basket of currencies, but the exact weight of the different currencies used to calculate the exchange rate is not specified. The Bank of Bostwana requires commercial banks and credit institutions to

provide it with, and disclose to the public, details of all charges payable for the operation of accounts and other services rendered.

Responsibility for formulating and implementing monetary policy in Lesotho rests with the Central Bank of Lesotho. In 1998 the Exchange Rate Policy Technical Committee was established to conduct technical analysis and recommend monetary and exchange policies to the Central Bank. The committee also spearheads the implementation of all monetary and exchange policy decisions of the bank's board. The bank consults and deliberates with the Ministry of Finance in order to ensure transparency and accountability. It also publishes daily and weekly economic indicators as well as quarterly and annual reports that are widely available to the public and that contain information on its activities and the performance of various sectors of the economy.

The Bank of Mauritius ensures transparency in its conduct of monetary policy by informing the public of the goals and instruments of policy and any changes in policy procedures

The Bank of Mauritius ensures transparency in its conduct of monetary policy by informing the public of the goals and instruments of policy and any changes in monetary policy procedures. The legal, institutional and economic framework of the bank, the objectives and rationale of policies and data and information on monetary and financial policies are available to the public in an understandable, accessible and timely manner, including on the bank's website. Its financial statements contain many details on the Bank's financial operations, and information on the operation of commercial banks, offshore banks and non-bank deposit-taking financial institutions are regularly published. Finally, the Central bank participates in the IMF's General Data Dissemination System.

Namibia has sought to promote transparency in its monetary and financial systems by adhering to and fully implementing the IMF's code of good practices on transparency. The Bank of Namibia formed a committee to examine the degree to which its practices conformed to the requirements of the code. The committee concluded that Namibia was already in compliance with many of the code's provisions and recommended several measures for areas not in compliance that were later adopted, including disclosing information on the boards of all organisations on which the governor, deputy governor and senior officials of the bank serve; posting particulars of its tender policy and putting the terms of reference of the overnight credit facility on the website; and publishing monthly information on the bank's foreign exchange reserve assets, liabilities and commitments. It also signed a Memorandum of Understanding on the consultative framework with the Namibia Financial Institutions Authority and included the number of grievances and complaints reported to the bank on unfair banking practices and the action taken on them in the bank's annual report.

The South African Reserve Board announces its inflation target and the time frame for achieving it and is held responsible if the target is not realised. The board issues a Monetary Policy Statement after each meeting of the Monetary Policy Committee, holds a Monetary Policy Forum for all interested parties and stakeholders to express their views on monetary policy, publishes semi-annually the *Monetary Policy Review,* which reports on and explains the board's actions and monetary developments in the country and internationally that could affect inflation,

and provides regular reports to parliament on the monetary policies and activities of the board.

Monetary policy in most of the French-speaking countries in West and Central Africa are under the control of the Central Bank of West African States and the Bank of Central African States. These are integral parts of the West African Economic and Monetary Union, comprising Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo, and the Central African Monetary Union, which comprises Cameroon, Central African Republic, Chad, Republic of Congo, Gabon and Equatorial Guinea. These two central banks and monetary unions originated in the colonial period as part of the Franc zone. There was a fixed exchange rate between the French franc and the currencies in the two monetary unions, and France guaranteed their free convertibility. France essentially determined the monetary policies of these two monetary unions and central banks, an arrangement that gave a high degree of integrity and stability to the monetary systems. Since 1999 the currencies of French-speaking West and Central Africa have been pegged to the euro, but France maintains a dominant role in monetary policies through its membership in the governing body of the two central banks.

Central Banks and other agencies that control monetary policies and regulate and supervise banks and other financial institutions must enjoy a high degree of independence and autonomy from the executive

In contrast with the above success stories, the monetary system in Ethiopia in general lacks transparency, with monetary policies not communicated, explained or justified to the public. The financial policies of the National Bank of Ethiopia are not made known to other financial institutions or the general public. And the credit system of commercial banks is not very clear. Efforts have been made to reform the financial sector since 1992/93 as part of the measures to create a market-based economy, including proclamations 84/1994 and 86/1994, which provided for the licensing and supervision of banks and insurance companies, defined the role of the central bank in supervising and regulating the financial system and authorised private banks and other financial institutions for the first time since the 1980s.

Central bank's independence

In many countries a major threat to monetary stability and the overall integrity of the monetary and financial systems is excessive borrowing by the government and intervention in the conduct of monetary and financial policies for political or other short-term reasons. To counter this threat, the central banks and other agencies that control monetary policies and regulate and supervise banks and other financial institutions must enjoy a high degree of independence and autonomy from the executive.

Most African countries have adopted provisions either in their constitutions or in the legislation or acts creating their central banks that grant them autonomy and independence. In reality, however, many central banks enjoy less autonomy and independence than is provided for in their constitutive documents. Some powers may be reserved for the government, central banks may have to consult the government on certain matters, the government may have financial leverage over the banks, real and effective limits on government borrowing may not exist, and perhaps most important, the head, senior officials and members of the board of central banks may be appointed by the government. This raises fundamental questions of institutional

checks and balances, the role and accountability of the executive and respect for the rule of law.

The situation in Botswana is unclear, even though the Central Bank seems to take decisions independently in areas under its competence. The governor of the bank is appointed by the president, and the bank falls under the purview of the minister of finance and development planning, who appoints the members of the board. In addition, according to the Bank of Botswana Act of 1996, certain powers are reserved, such as the power of the president to determine the par value of the national currency on the advice of the minister and in consultation with the bank. In practice though, the president has always accepted the advice of the bank.

The Central Bank of Egypt has the legal autonomy to manage its affairs and to control, regulate and implement monetary and credit policies. This power is vested in the bank's board of directors. At the same time, though, the governor of the bank and deputy governors are appointed for renewable four-year terms by a presidential decree, on the advice of the prime minister, who also fixes their remuneration. The board has representatives of the Ministry of Economy, Finance and Planning as well as two chairs of banks, two representatives of the private sector and others. The central bank suffers from lack of clarity in the role and responsibilities of the chair, who is the governor of the bank, and those of board members, who represent other institutions.

In many countries, central banks have little autonomy and independence because the governor is appointed and can be removed by the government

The document establishing the National Bank of Ethiopia describes it as an autonomous institution, but, its governing board includes the ministers of finance, trade, and economic development and other members appointed by the government. Under these circumstances, it is difficult to see how the bank could have any autonomy and independence from the government. Case in point: even though the Monetary and Banking Act of 1994 limits government borrowing, the bank may still be required to finance government deficit beyond the specified limit.

The statutory instruments establishing the Bank of Ghana contain enough provisions to ensure its independence. The reality, however, is different. The bank needs narrower macroeconomic objectives to be more focused, adequate capitalisation to reduce dependence on the Treasury or Ministry of Finance for operating funds, longer tenure for the governor, deputies and members of the board of directors and legal limits on how much the bank can finance the government's budget.

The Central Bank of Kenya has little autonomy and independence because the governor is appointed and can be removed by the government. A blatant case of government intervention in the bank's activities occurred when the bank was pressured to print more money in time for the 1992 general elections.

The Central Bank of Lesotho is an autonomous body that works closely with the executive branch of the government. The bank is required to consult or hold deliberations with the Ministry of Finance to ensure transparency and accountability. In addition, the ministry's permanent secretary attends all meetings of the bank. This exchange is likely to create confusion and doubt about the actual degree of the bank's independence.

In Mauritius the governor and the managing director of the Bank of Mauritius are appointed by the prime minister, who also appoints the other directors of the bank on the recommendation of the minister of finance. The president or prime minister can remove any of these officials from office in case of insolvency, misconduct or other crimes or lapses. The government recognises the need for improvement and is in the process of amending the Bank of Mauritius Act to give the bank greater independence in formulating and implementing monetary policies.

Namibia's constitution and the Bank of Namibia Act of 1990 provide for the establishment of the Bank. Neither document explicitly mentions the bank's independence, although in practice it has independence in administrative and financial matters. Because, the president appoints the governor and the deputy governor, on the advice of the minister of finance, the overall independence of the bank is rated as moderate.

The problem does not lie with formulating and adopting principles, rules, procedures, codes and standards of good and internationally accepted behaviour, but implementing them at the national level

The independence of the Central Bank of Swaziland is compromised to some extent by the fact that the governor is appointed by the king, who has an important role in the political life of the country. Not surprisingly, there are reports that the central bank is subject to political and commercial influence.

Regulatory and supervisory bodies

Effective regulation and supervision of banks and other financial institutions are crucial to ensure stability and credibility in the financial system. The main objectives of regulating and supervising banks and other financial institutions are proper valuation of assets, prompt recognition of losses, early corrective measures to prevent insolvency and prompt action to deal with failures. The Basel Committee on Banking Supervision identified the preconditions for effective banking supervision in its Core Principles for Effective Banking Supervision.[1] As is often the case, the problem does not lie with formulating and adopting principles, rules, procedure, codes and standards of good and internationally accepted behaviour. The problem is how to implement them at the national level.

Several African countries have improved their regulatory and supervisory bodies, but limited institutional capacity has been a major stumbling block to more progress. The arrangements for regulating and supervising banks and other financial institutions in Botswana are still evolving, with several bodies in the government, central bank and other agencies sharing overlapping responsibilities and interests in this area. For example, while the Bank of Botswana regulates and supervises the financial institutions it licences, mainly commercial banks, the Ministry of Finance and Development Planning is responsible for development financing institutions, insurance companies and pension funds, and there is a separate body for the stock exchange. Some of these regulatory authorities, such as the Bank of Botswana, have independence and credibility, but others, such as those responsible for non banking financial institutions, lack independence. On the whole, the banks are well regulated and supervised, and efficiency in the banking system improved between 1997 and 2001.

Ethiopia has been trying to reform its financial sector since 1992/93 by improving its legal, institutional and regulatory framework. Major steps in this direction were the

adoption of proclamations 84/1994 and 86/1994, which provided for the licensing and supervision of banks and insurance companies, authorised private entry into the financial sector and defined the regulatory and supervisory role of the National Bank of Ethiopia. Proclamation 40/1996 provided for the licensing and supervision of micro finance institutions and established the legal framework for their operations. The National Bank of Ethiopia is empowered to licence and supervise banks, insurance companies and other financial institutions and to issue directives on credit transactions. To enable the bank to perform its duties effectively, the Supervision Department was created in the 1990s, but it has a serious shortage of specialised workforce. Consequently, regulation and supervision of the financial sector is not yet effective.

The Bank of Ghana has made some progress in performing these functions, and the proliferation of new banks and other financial institutions has resulted in greater competition, improved efficiency and the introduction of new and improved financial products. But, the financial system is still weak, due to the operation of unlicensed foreign exchange dealers and the hoarding and conservation of assets in foreign currency because of the lack of confidence in monetary stability, which the bank has been unable to control.

In Ghana the proliferation of new banks and other financial institutions has resulted in greater competition, improved efficiency and the introduction of new and improved financial products

Several agencies are responsible for regulating and supervising the financial sector in Kenya: the Central Bank of Kenya, the Capital Markets Authority, the Commission of Insurance and the Retirement Benefits Authority. All of these institutions report to the Treasury. The Central Bank of Kenya has, on the whole, successfully regulated and controlled the banking system, but it has not been effective in controlling non performing loans in commercial banks or in supporting the small and unstable banks that have recently threatened the banking system. The Capital Markets Authority has, however, successfully mobilised domestic and foreign capital for investment, reorganised the legal framework and become involved in the creation of an integrated East African Capital Market. Similarly, the Commission on Insurance has effectively supervised the insurance industry. There are concerns, though, that the existence of several regulatory bodies for the financial sector might lead to overlap in responsibilities and conflicting regulatory requirements, and thus to inefficiency in the regulatory and supervisory system.

The Bank of Morocco, the Bank al Maghrib, suffers from several shortcomings that limit its ability to have an effective regulatory and supervisory role. This has led to attempts to revise the statutes governing the bank. Among the objectives are adapting the legal framework for intervention and the bank's mission to the evolving financial system and integrating transparency rules on monetary policies into the regulations on its operations. An equally important objective is to establish new rules to regulate the relationship between the bank and the Treasury, especially with respect to lending by the bank to the Treasury.

The regulation and supervision of South Africa's financial sector is considered quite good. Increasingly, the Reserve Bank seems to be shifting its concentration from micro-prudential or the day-to-day supervision of the operations of banks to macro-prudential supervision or the financial system as a whole. As in other countries, the Reserve Bank carries out its supervisory functions through off-site and on-site

inspections. South African banks are generally well managed, with sophisticated risk management and corporate governance systems. But there are weaknesses among small banks, as demonstrated by the recent collapse of two small banks that were then acquired by larger banks. Some major micro-credit institutions have also collapsed due to their failure to comprehensively analyse the credit exposure of borrowers, including liabilities to retail stores.

Among the obstacles to effective regulation and supervision of the financial system in Africa are the multiplicity of regulatory and supervisory bodies with overlapping mandates but no division of responsibilities or effective mechanisms for coordination

The regulation and supervision of banks in French-speaking West and Central Africa was rather lax in the 1970s and 1980s. There were numerous cases of government intervention in the granting of loans and political appointments in the banking system. Government-owned development banks were particularly affected by these shortcomings. In the early 1990s, steps were taken to address these problems. Most government-owned development banks were closed or privatised, the government sold its shares in other banks, and steps were taken to recover nonperforming loans. These measures benefited from the support of donors, especially France. A Banking Commission was created for West Africa in 1990 and another for Central Africa in 1993, both of which had more regulatory and supervisory powers. These measures have gone a long way in improving the quality of regulation and supervision of the financial system in these regions.

In sum, while some African countries have achieved good success in regulating and supervising their financial sectors, there are several countries where a great deal more needs to be done. Among the obstacles to effective regulation and supervision of the financial system in Africa are the multiplicity of regulatory and supervisory bodies with overlapping mandates but no division of responsibilities or effective mechanisms for coordination, the failure to implement rules and regulations in place because of political interference or the lack of the capacity to do so, gaps in the regulatory framework and in enforcement procedures and shortcomings in the overall macroeconomic framework and in the system of governance and accountability.

Addressing these deficiencies requires a multipronged approach, with active support from the international community. Several African countries are taking action—providing additional training for existing staff to enhance skills and improve productivity, modernising equipment and information systems, hiring new staff, especially in the field of information technology, enacting new legislation to give the regulatory and supervisory bodies the power to carry out their mandates and involving civil society in the process to sensitise and educate stakeholders on the role of regulatory agencies in the financial system.

To achieve these objectives, regulatory and supervisory authorities must have the authority to deal decisively and in a timely manner with troubled financial institutions. Specifically, regulatory and supervisory bodies must be empowered to make and enforce regulations. They must also have access to all bank records and data, independently examine loan, investment and other financial policies and procedures and ensure that internal control and audit mechanisms are adequate. The support of international institutions, especially the World Bank and the IMF, is also being actively pursued to achieve these goals and objectives. If these efforts are energetically pursued, they would go a long way in improving the effectiveness of regulatory and supervisory institutions.

Concluding remarks

Progress has been made in economic governance, public financial management and accountability and the integrity of the monetary and financial systems by several African countries. As a result, the situation in Africa today is better than it was a decade or so ago. However, a great deal remains to be done.

The reasons behind these shortcomings are many. The question of leadership and how seriously it is committed to sound public financial management and accountability and the integrity of the monetary and financial system is central, as is the question of the ability of other institutions of government and civil society in general to control the executive and make it accountable. In this regard, the role of parliaments and civil society organisation is crucial. These institutions must be empowered and their capacity enhanced so that they are more or less equal interlocutors and partners with the executive branch of government. The dominance of the executive over the legislature and the judiciary must be sharply curtailed, and a true and genuine system of checks and balances must be established among the three branches of government.

In addition, civil society organisations must be strengthened, and their independence from the government as well as their ability and capacity to play a greater and more effective role in economic policymaking and implementation must be greatly reinforced. Many of these organisations simply lack the capacity and experience to be effective in economic governance and public financial management.

Another equally important shortcoming that needs to be addressed is the absence of the necessary capacity in many African countries to implement well intentioned reform programmes and measures. African countries are being called upon to introduce far-reaching reforms in several areas simultaneously and within a very short period of time—reforms that took decades if not centuries in other regions. The capacity to introduce all these changes within the expected period of time is simply lacking in most African countries.

Given the magnitude of the challenges and the tasks facing African countries, African governments and other stakeholders, especially the international community, must focus not only on devising schemes, policies and programmes and adopting internationally accepted rules, regulations and codes of good practices, but also on ensuring that the capacity to implement these well conceived reforms are available. A holistic approach will be needed for the problem of governance and to make progress on all fronts simultaneously, challenging though this may be. The timing and sequencing of these reforms also need to be carefully considered, to avoid overtaxing the countries' capacity and diverting limited attention and resources to areas of secondary, rather than primary, importance.

Note

1 The Basel Committee on Banking Supervision, established by the central bank Governors of the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, United Kingdom and United States) in 1974. It has identified the preconditions for effective banking supervision in its Core Principles for Effective Banking Supervision.

They are:

- An effective framework consisting of sound and sustainable macroeconomic policies.
- A well-developed public infrastructure.
- Effective market discipline.
- Procedures for fair and effective resolution of business disputes and an appropriate level of systemic protection.
- Clear responsibilities and objectives for each supervisory agency.
- Operational independence and adequate resources for each agency.
- A suitable legal framework for banking supervision.
- Appropriate arrangements for sharing information among supervisors.

References

ADB (African Development Bank), 2003. *African Development Report*, Abidjan.

ADB (African Development Bank) and OECD (Organisation for Economic Co-operation and Development), Development Centre, 2003. *African Economic Outlook 2002/2003*, Paris.

ECA (Economic Commission for Africa), 2004. "ADFIV Consensus Statement." Addis Ababa.

World Bank, 2004. World Development Indicators database. March [www.worldbank.org/data].

Private sector development and corporate governance

3

The previous chapter traced African countries' increasing commitment to and progress in public financial management and accountability and the integrity of monetary and financial systems. It concludes that while progress has been uneven across African countries, the overall trend has been positive and there is room for optimism. This chapter examines African countries' efforts to encourage the development of the private sector and promote good corporate governance.

Since the mid-1980s the strategy of private sector–led growth and development has been based on the realisation that African governments by themselves could not mobilise the enormous resources required for economic development and poverty reduction and that the private sector, especially foreign investors, would have to play an important if not essential part. In addition, African countries have accepted that the market is better at allocating resources and managing the economy more efficiently than governments. They have endeavoured to create an environment conducive to both domestic and foreign investment, which has led them to offer a wide range of incentives and strengthen cooperation between the public and private sectors.

Even with incentives, only a few African countries have been able to attract a substantial amount of FDI in particular and private investment in general

The evidence thus far suggests that even though new incentives, measures and institutions are in place, only a few African countries have been able to attract a substantial amount of foreign direct investment (FDI) in particular and private investment in general. Moreover, the success of these countries seems to be related more to their resource endowments than to the incentives and other measures they have put in place. The failure of countries that have sought to attract investors by offering various incentives and other facilities can also be attributed to the fact that partnership between the public and private sectors is still weak, property rights are not effectively protected, corporate governance requires strengthening, and the overall business environment needs to be improved.

African countries have also taken steps to protect property rights, ensure business competition and improve corporate governance. According to the *Guidelines for Enhancing Good Economic and Corporate Governance in Africa* from the Economic Commission for Africa (2002), corporate governance refers to the mechanisms by which private, publicly traded and state-owned enterprises are managed and governed, and good corporate governance "entails the pursuit of objectives by the board and management that represent the interests of a company and its shareholders including effective monitoring and efficient use of resources" (p. 5). Among the benefits associated with good corporate governance are its positive

impact on both domestic and foreign private investment, the efficient mobilisation and allocation of capital, the efficient monitoring of corporate assets, the effectiveness of overall corporate performance and improved national economic performance.

Development of the private sector

African countries have adopted a wide range of measures to attract private investment by offering fiscal inducements, capital, training and market information for the development of the informal sector and improving infrastructure

African countries have adopted a wide range of measures to attract private investment by offering investors fiscal and other inducements, providing capital, training and market information for the development of the informal sector, creating institutions with the sole task of making it easier for private business to be established and operate and developing infrastructure to enhance the possibilities of profitable private investment.

Tax incentives

The tax incentives that African countries offer as inducements for investment, both local and foreign, are impressive. While the details vary from country to country, the nature of these incentives is more or less the same: they consist of tax rebates, exemptions and holidays, exemption from customs duties, export allowance, accelerated depreciation, investment allowance and tax reduction for training. The incentives are intended not only to stimulate the flow of investment, but also to encourage exports, create employment, enhance labour skills and technological development and develop disadvantaged regions of the country.

Benin grants exemptions from taxes on profits to industries for five years and reduces taxes on industrial and commercial profits from 48% to 38%. Ethiopia grants a tax holiday of 1–5 years depending on the sector of investment and its location, while Ghana applies an 8% corporate tax on non-traditional exports and offers a 10-year tax holiday for companies located in the free zones and a location incentive of 25–30% in tax rebates. Companies located in Malawi's export processing zones and companies in priority industries enjoy a 10-year tax holiday, after which their tax rate is 15%.

Kenya grants investors in economic processing zones a tax holiday of 25 years and applies a tax rate of 25% for the subsequent 10 years. Rebates on corporate taxes are also granted for investment in priority areas, such as livestock, farming, fish processing, dairy industry and edible oils. These rebates vary with the number of people employed to encourage labour-intensive technologies. In addition, enterprises that invest in research and development in Kenya are exempt from paying import duties, income tax and value added tax.

Mauritius imposes a corporate tax of 15% on industries that fall under the Pioneer Status Scheme and the Strategic Local Enterprise Scheme. Enterprises under the Pioneer Status Scheme use technology or skills that therefore enhance the industrial and technological development of the country. Enterprises under the Strategic Local Enterprises Scheme produce for the local market, promote the national interest and facilitate economic, industrial and technological development. In addition, Mauritius grants a 10% tax credit on all investment above $3.33 million.

South Africa grants tax incentives to encourage investment in clearly identified industries. The Strategic Industrial Projects Scheme offers a package of incentives to attract local and foreign investment to key industrial projects. In addition, the Spatial Development Initiative supports investment in areas where socio-economic conditions are poor, but the potential for development is good.

Exemption from and reductions in customs and excise tax are other incentives granted to investors by African countries, including Ethiopia, Ghana, Kenya, Malawi, Mauritius and Senegal. The exemption usually covers the import of raw materials and equipment. In Kenya this privilege is also extended to heavy-duty trucks for bonded warehouses and to enterprises engaged in research and development.

Several African countries grant export incentives to private investors in the hope of stimulating exports, diversifying production, overcoming the constraint to development of narrow domestic markets and creating employment. Benin has reduced tariffs on exports to countries that are members of the West African Economic and Monetary Union and grants a 100% exemption for selected industrial products exported to these countries.

Furthermore, Ethiopia exempts all exports except coffee from tax, while Malawi grants an allowance of 12% on all exports and an additional 25% allowance on all international transport expenses related to exports. Under its Export Enterprise Scheme, which covers enterprises engaged only in export production, Mauritius levies no corporate tax or tax on dividends paid to shareholders and grants an exemption from customs duty and sales tax for scheduled raw materials and equipment.

Several African countries grant export incentives to private investors in the hope of stimulating exports, diversifying production and creating employment

One method employed by many developing countries, including several African countries, to encourage exports is the creation of export processing zones. African countries that have established such zones include Ghana, Kenya, Malawi, Mauritius and Morocco. There is, however, little evidence that the creation of export processing zones has increased investment and exports or acted as a catalyst for the economy as a whole. In fact, some evidence shows that export processing zones in developing countries tend to induce industries to locate in the zones to benefit from the incentives without adding anything new to the economy (World Bank 2003.).

Accelerated depreciation and investment allowance are other incentives that many African countries provide to both local and foreign investors, but the items covered vary by country. Kenya offers accelerated depreciation for industrial buildings, hotels, certain types of agricultural and construction equipment, aircrafts, ships and computers and office equipment. Kenya also grants a 100% investment allowance on plant, machinery, equipment, raw materials and other inputs, a 60% investment allowance to enterprises in Nairobi and Mombassa and a 100% investment allowance to enterprises located elsewhere in the country.

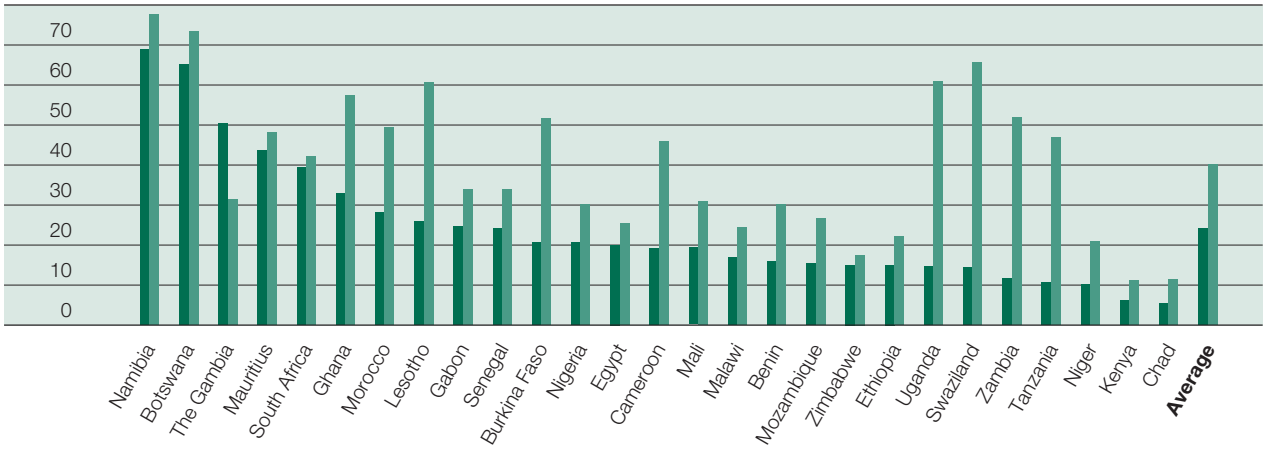
Some African countries allow generous tax deductions to encourage investors to provide training to nationals and to invest in infrastructure facilities in disadvantaged areas. Malawi offers a deduction of 50% of the cost of training Malawians to the certificate, diploma or degree level. Kenya allows investors to deduct expenditures on infrastructure, roads, electricity, telephones and water in the hope of encouraging investment in underdeveloped parts of the country that lack these facilities.

The wisdom of granting a wide range of incentives to investors is questionable. While both developed and developing countries have used these measures, developing countries tend to do so more than developed countries (World Bank 2003). According to the United Nations Conference on Trade and Development (UNCTAD 1996), incentives can have a positive effect on attracting FDI at the margin. But other studies conclude that incentives are generally ineffective when the fundamental determinants of FDI are absent, that the incentives rarely make up for deficiencies in a host country's overall economic environment and that they fail to generate the desired externalities. Despite the many incentives being granted by African countries to attract private investment, the vast majority of experts surveyed do not believe that they have been effective, especially for local investment.

Despite the many incentives being granted by African countries to attract private investment, the vast majority of experts surveyed do not believe that they have been effective, especially for local investment

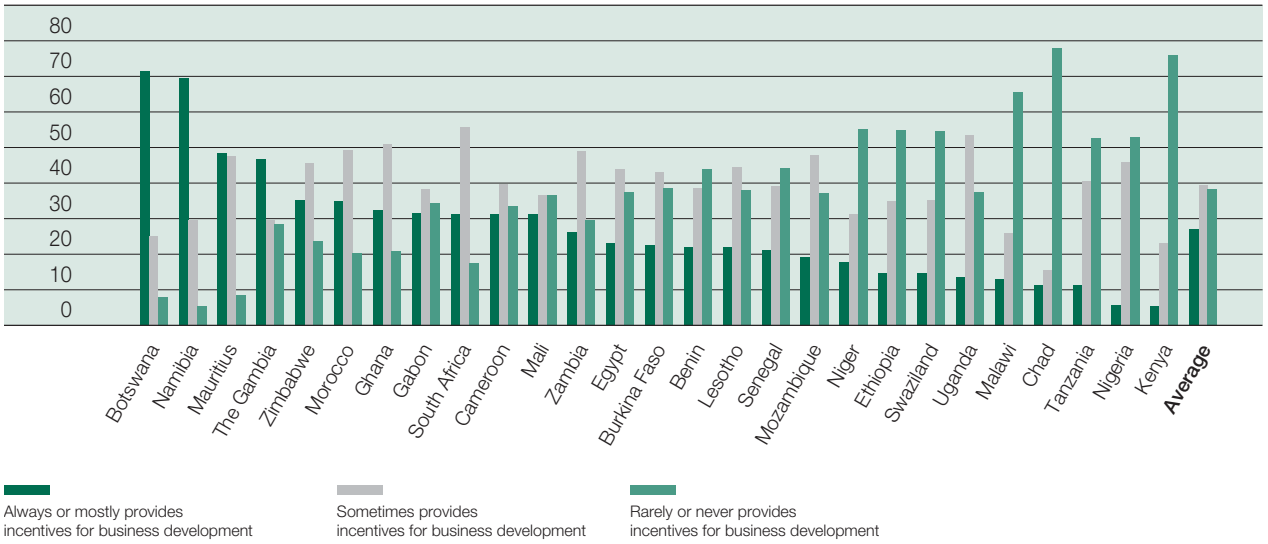
The survey of experts suggests that tax systems in many African countries have not attracted private investment. Overall, only an average of 24% of the experts surveyed indicated that the tax system encourages local investment in all or most sectors, compared with 40% who reported that the system encourages FDI in all or most sectors (figure 3.1).

Figure 3.1 Expert opinion on the tax system's influence on local and foreign investment
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Figure 3.2 Expert opinion on the tax system's influence on business development
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Moreover, in Namibia, Botswana and The Gambia more than a half of the experts surveyed said that the tax system encourages local investment in all or most sectors, but the share of experts surveyed who gave the same response for FDI ranged from 31% to 74% in the same countries. In eight countries more than a half of the experts surveyed said that the tax system encourages FDI in all or most sectors, compared with three countries in which more than a half reported that the tax system encourages local investment. Only in The Gambia did more of the experts surveyed say that the tax system encourages local over foreign investment.

The average share of experts surveyed who said that the tax system always or mostly provides incentives for business development was 26% compared with 37% who said it never or rarely does so

On the broader question of the degree to which the tax system provides incentives for business development, more than 50% of the experts surveyed in Botswana and Namibia said that it always or mostly does, and 25–50% of the experts surveyed in Mauritius, The Gambia, Zimbabwe, Morocco, Ghana, Gabon, South Africa, Cameroon and Mali gave that response (figure 3.2). In the remaining 16 countries less than 25% of the experts surveyed expressed this view. In eight countries more than 50% of the experts surveyed said that the tax system never or rarely provides incentives for business development. The average share of experts surveyed who said that the tax system always or mostly provides incentives for business development was 26% compared with 37% who said it never or rarely does so.

Two points emerge from the results of these two survey questions. First is that several countries that have granted tax incentives to investors are not rated highly by the experts surveyed in the degree to which the tax system encourages local or foreign investment and provides incentives for business development. By contrast,

Botswana and Namibia are rated highly in encouraging all three. Other countries that performed fairly well on these measures are Gabon, The Gambia, Ghana, Mali, Mauritius, Morocco and South Africa.

Second is that the countries that rank high in the opinion of the experts surveyed on incentives have not necessarily excelled at attracting investment, especially FDI. This lends support to the World Bank's conclusion that tax incentives by themselves can be costly and unsuccessful at attracting investment. This should, in turn, lead African countries to reconsider the reliance and importance they have given to them.

Other incentives and support for investors

African countries have used other measures to attract investment, such as assisting with access to land, labour and infrastructure, reserving some sectors of the economy for nationals to promote their development and assisting with training, management and information and marketing. Except in a few cases, the impact of these measures has been negligible.

Morocco tried to stimulate both national and foreign investment by creating a capital market, eliminating government subsidies to semi-public enterprises and strengthening transparency of stock market operations

Morocco tried to stimulate both national and foreign investment by creating a capital market after the financial reforms introduced in the 1990s, eliminating government subsidies to semi-public enterprises in order to make more credit available to the private sector and strengthening transparency of stock market operations to boost investor confidence. To facilitate the development of small- and medium-size enterprises, a national agency was created along with investment centres in major cities and special structures in government agencies to simplify administrative procedures.

South Africa provides infrastructure to the private sector as part of its Critical Infrastructure Program and makes loans to investors at below-market rates under certain circumstances. Kenya ensures the availability of skilled expatriate labour to investors by automatically granting entry permits, renewable every two years, to managerial and technical staff. Benin grants the right to expatriates and their families to enter, do business in and move about the country.

One concern that makes many African countries hesitant to open their economies is the possibility that they will end up dominated by foreign investors, which has many implications for national sovereignty. Accordingly, some African countries have taken measures to reserve investment in certain sectors for nationals and sought to address past confusion and ambiguity by clearly specifying sectors in which foreign investors are welcome.

A case in point is Tanzania, where retail and wholesale trade, product brokerage, representation of foreign companies, hairdressing and beauty salons are reserved for nationals, while foreign investment is particularly encouraged in agriculture and livestock, tourism, natural resources, manufacturing, construction and transport, transit trade and information communication technology. These sectors are also open to domestic investors, and joint domestic-foreign partnerships in these sectors are particularly encouraged. The registration process is the same, thus removing any hint of bias against foreign investors.

By contrast, in Ethiopia banking and insurance, large-scale power production, telecommunications, other public utilities and small personal services are closed to foreign investors. In addition, partnership with domestic investors is required for investment in engineering, metallurgy, pharmaceuticals, basic chemicals, petrochemicals and fertilizers.

Mali provides training, management and information and marketing assistance to investors for diagnosis and restructuring, designing procedural manuals and accounting plans, setting up management information systems and conducting feasibility studies. Facilities have been put in place to provide initial vocational training and in-service training in enterprises, and three agencies have been created to supply information to assist entrepreneurs in making investment and management decisions. Many of these programmes, notably those intended to provide management support and training, benefit from substantial donor support.

South Africa has a Skills Support Program that provides cash grants of up to 50% of the cost of training staff for a new or expanding project

South Africa has a Skills Support Program that provides cash grants of up to 50% of the cost of training staff for a new or expanding project. And in Senegal the Official Management Center assists enterprises in matters of taxation and offers supervision services as well organisational and training advisory services.

These measures are particularly important to local investors, especially micro and small investors.

Capital, training, information and other assistance

The informal sector plays an important role in the economies of several African countries as a source of employment and an important instrument in poverty alleviation. According to one study (Charmes 1999), it accounts for 27% of the GDP of all Sub-Saharan African countries and nearly 20% of total employment. The informal sector is particularly important in the non-agricultural sector, accounting for nearly 41% of non-agricultural GDP and approximately 77% of non-agricultural employment. Almost 59% of non-agricultural GDP in Niger and nearly 93% of non-agricultural employment in Benin is in the informal sector. Only in South Africa does the informal sector play a less significant role in the economy.

Recent data on a few countries suggest that the informal sector is growing rapidly. In Burkina Faso the informal sector accounts for 31% of GDP and 20% of total employment. In Morocco there are more than 1.2 million enterprises in the informal sector, which account for 17% of GDP and 20% of employment.

Several countries have adopted explicit and comprehensive policies and programmes to encourage the development of the informal sector, with Benin, Botswana, Kenya, and Senegal leading the way. The objective of these efforts is to ensure that informal enterprises are registered and better regulated, especially in hygienic and environmental conditions and labour laws dealing with child labour, minimum wages and safety conditions as well as to increase the source and size of their capital and workers, expand the volume of their operations, encourage more advanced technology and management methods and operate in more permanent locations with better infrastructure and services. The goal is to transform micro and

very small enterprises to small- and medium-size enterprises with more potential to contribute to the economy, including tax revenue.

An average of 56% of the experts surveyed reported that the government always or usually recognises the importance of the informal sector in the economy and actively encourages its development towards the formal sector, 31% that the government sometimes recognises the importance of the sector but provides no encouragement for its development, and 13% that the government rarely or never recognises the importance of the informal sector in the economy (figure 3.3).

Furthermore, in 20 countries more than a half of the experts surveyed said that the government always or usually recognises the importance of the informal sector and actively encourages its development towards the formal sector, and in only 4 countries did more than a quarter say that the government rarely or never recognises its importance. This evaluation is corroborated by the efforts and variety of institutions that many governments have established.

An average of 56% of the experts surveyed reported that the government always or usually recognises the importance of the informal sector in the economy

Namibia has taken significant steps to support the informal sector as part of its overall support for the private sector. These include strengthening the Small Business Loan Scheme and mobilising additional resources for it from both internal and external sources, creating industrial parks with more and better market sites for retailers, introducing a group purchasing scheme to facilitate the bulk purchase of goods and the sharing of shipping costs and establishing the Institute of Management and Leadership Training to train entrepreneurs.

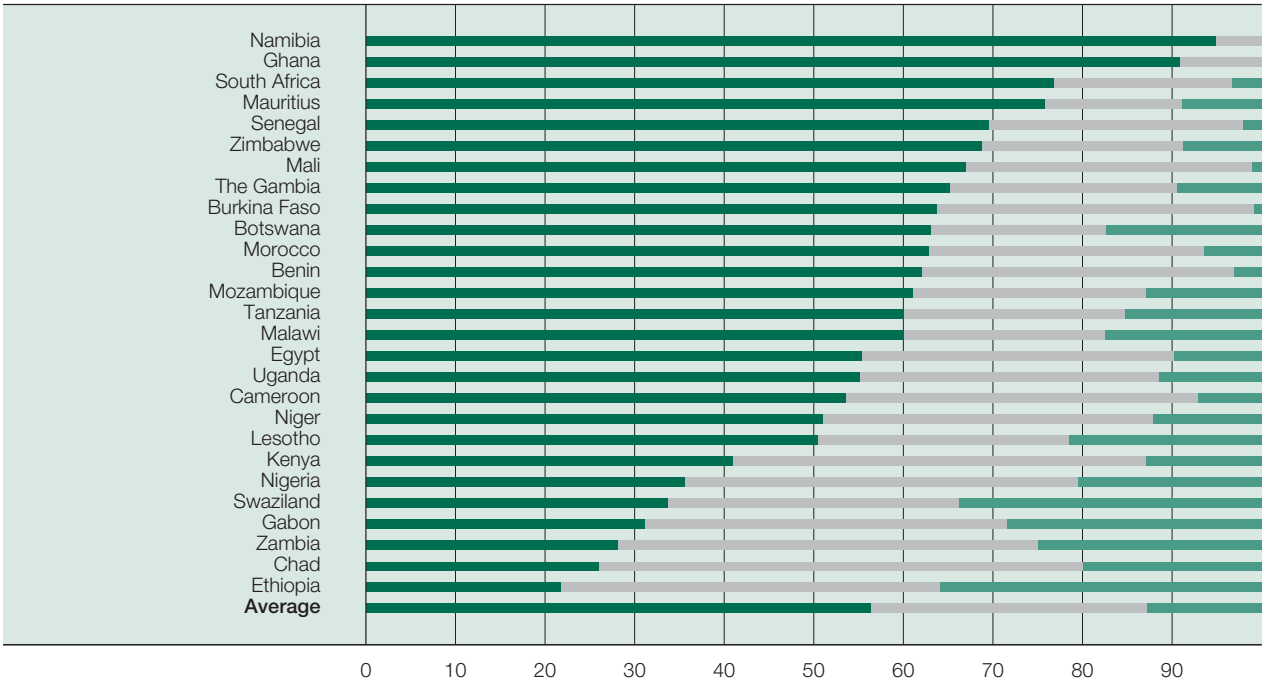
Senegal has a ministry devoted to the promotion of small- and medium-size enterprises and industries. In addition to various fiscal incentives, Senegal has adopted a series of measures to accelerate and simplify the establishment of these enterprises, created Management Centers to assist them in accounting, management and taxation and created the Investment and Project Promotion Agency and the Small-scale Enterprise Handicrafts Agency financed by the United Nations Industrial Development Organization and the United Nations Development Programme. The government created regional chambers of handicraft workers that are coordinated at the national level. And to facilitate consultation, coordination and joint action with the informal sector, the government established the Coordination Patronale du Senegal in 1996.

Access to credit is one of the main obstacles to the development of the informal sector in Africa. Many countries have created special schemes and facilities to address this problem. In Senegal this is done through credit lines to handicraft workers that are made available by the Economic Development Fund and the West African Development Bank and that are financed through banks by donors, including the APEX line established in 1988. These credit lines have had limited impact, leading to the rapid development of decentralised financial structures such as mutual benefit institutions.

In Gabon the informal sector is comparatively small and dominated by Africans from West and Central Africa. Consequently, the government has not been giving the

Figure 3.3 Expert opinion on whether governments recognise the importance of the informal sector in the economy

Share of experts surveyed, by country (%)



Always or usually recognizes the importance of the informal sector in the economy and actively encourages its development towards the formal sector

Sometimes recognises the importance of the informal sector in the economy but provides no encouragement towards the formal sector

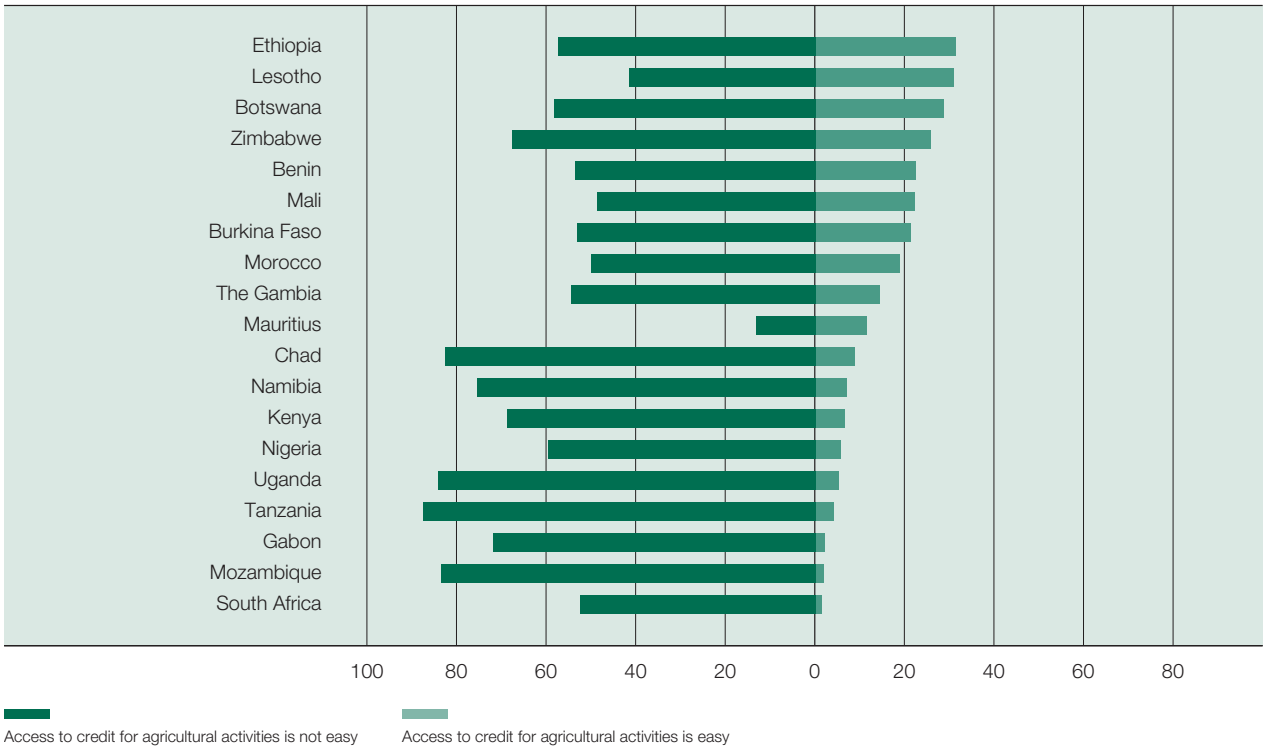
Rarely or never recognises the importance of the informal sector in the economy

Source: ECA governance survey of experts

sector the attention it deserves. Still, the Fund for the Expansion and Development of Small and Medium Enterprises and Industries has been providing credit to micro-enterprises. Of the 779 enterprises to which the fund provided credit in 1993–2000, 531 were micro-enterprises. It is responsible for generating 5,000 jobs in that period. The fund has been focusing even more on them since 2002.

Swaziland also began providing credit for the informal sector in the 1990s, through the Small Scale Enterprise Loan Guarantee Scheme and the Export Credit Guarantee Scheme. Due to strict requirements for obtaining credit from these institutions, especially the requirements for collateral, access to credit through them has been limited, and the financing available to the schemes underutilised.

Figure 3.4 Household opinion on whether access to credit for agricultural activities is easy
Share of households surveyed, by country (%)



Note: Values do not sum to 100% because no adjustment is made for non-responses

Source: ECA governance survey of households

Despite this multiplicity of efforts, the informal sector is still weak in Africa. There are still several bottlenecks to the development of this sector, including access to infrastructure, services and modern technology and inadequate managerial talent. Another crucial element for the sector to develop is access to credit. The vast majority of households surveyed indicated that access to credit for agricultural activities is not easy (figure 3.4). Only an average of 14% said that it was. The countries with the best scores were Ethiopia and Lesotho, where 31% of households reported easy access to credit.

The main reason for the meagre results in the development of the informal sector is the lack of the resources and institutional capacity. Given its importance, its development deserves continued and energetic long-term support from African countries and strong support from external donors.

Institutions to simplify procedures and reduce costs

African countries have realised that lengthy procedures and high costs to establish and operate a business are costly to investors and may drive them to locate elsewhere. Some African countries have thus created institutions to reduce costs and simplify bureaucratic procedures.

Ghana created the Ministry for Private Sector Development in 2000 to create a "Golden Age of Business" by facilitating the growth and development of a competitive and vibrant private sector. The ministry's responsibilities include coordinating the efforts to strengthen the private sector, fostering positive attitudes towards the private sector, creating an enabling environment for private sector development and eliminating bureaucratic restrictions and impediments to private investment.

The main agency for facilitating private investment in Mauritius is the Board of Investment, which assists investors from first contact until project completion. A network link to local government and other public agencies enables investors to apply online for permits and licences and to follow up on the progress of their applications. This measure has simplified and accelerated the process of approving investment.

Although the development of the informal sector lacks resources and institutional capacity, it deserves continued and energetic long-term support from African countries and strong support from external donors given its importance

The Tanzania Investment Center, created under the 1990 Investment Act as revised in 1997, is a one-stop centre for investors. It succeeded in reducing the time required to approve new investment from 100 days in 1997 to 14 days in 2000.

African countries' efforts to reduce the administrative barriers and costs of opening and operating business have been only partially successful. A study of administrative barriers to foreign investment in 32 developing countries, including 20 African countries, shows that the average number of procedures, time and cost required for entry approvals, access to land and site development and operations are quite comparable to those in other developing countries (table 3.1).

Only Burkina Faso, Morocco and Tanzania had more than the average of 11 procedures required for entry; and only Mozambique had more than the average of 31 procedures for access to land and site development. Meanwhile Ghana, Mali, Mozambique, Nigeria, Tanzania and Uganda had more than the average of 11 procedures required for operations, and seven African countries had more than the average number of business days required for entry approval. Six African countries had more than the average number of days required for access to land and site development, while only four had more than the average number of days required for operations. But comparison, only two procedures and two business days are required to establish a new business in Canada.

The average cost of investment procedures for all 32 developing countries in the study are $515 for local investors and $2,407 for foreign investors (figure 3.5). Mozambique and Nigeria had above-average costs for local investors, and Lesotho, Morocco, Malawi, Uganda, Nigeria, Madagascar, Tanzania and Mozambique had above-average costs for foreign investors.

Table 3.1 High administrative barriers to foreign investment in selected African countries

	Number of procedures			Time (business days)			Cost ($)		
Country	**Entry**	**Access to land and site development**	**Operations**	**Entry**	**Access to land and site development**	**Operations**	**Entry**	**Access to land and site development**	**Operations**
Burkina Faso	14	—	—	29	—	—	655	—	—
Egypt	10	—	—	52	—	—	943	—	—
Ghana	8	19	12	34	255	30	338	2,940	202
Kenya	10	22	10	51	70	39	397	3,975	2,282
Lesotho	2	19	8	61	341	122	120	154	—
Madagascar	11	15	—	171	375	8	80	47	—
Malawi	10	30	2	46	413	20	470	562	10
Mali	9	27	13	79	170	—	154	2,696	250
Mauritania	11	—	10	54	—	—	328	—	3,186
Morocco	12	16	5	91	278	63	255	1,149	1,981
Mozambique	8	34	13	106	625	—	143	11,045	—
Nigeria	8	23	26	18	210	30	176	13,750	809
Senegal	11	25	10	96	228	40	801	1,847	51
South Africa	6	—	—	23	—	—	158	—	—
Swaziland	10	13	8	53	117	20	391	4,006	200
Tanzania	19	25	18	187	795	45	3,040	508	12
Tunisia	7	—	—	39	—	—	286	—	—
Uganda	9	24	14	69	495	70	607	1,520	—
Zambia	6	—	—	29	—	—	124	—	—
Zimbabwe	6	21	10	85	90	30	352	4,379	13
Average	**9**	**22**	**11**	**69**	**319**	**43**	**491**	**3,470**	**817**
32 developing countries									
Average	11	31	11	69	334	41	504	4,723	756
Minimum	2	13	2	18	70	8	80	47	10
Maximum	29	125	26	187	795	122	3,040	22,523	3,186

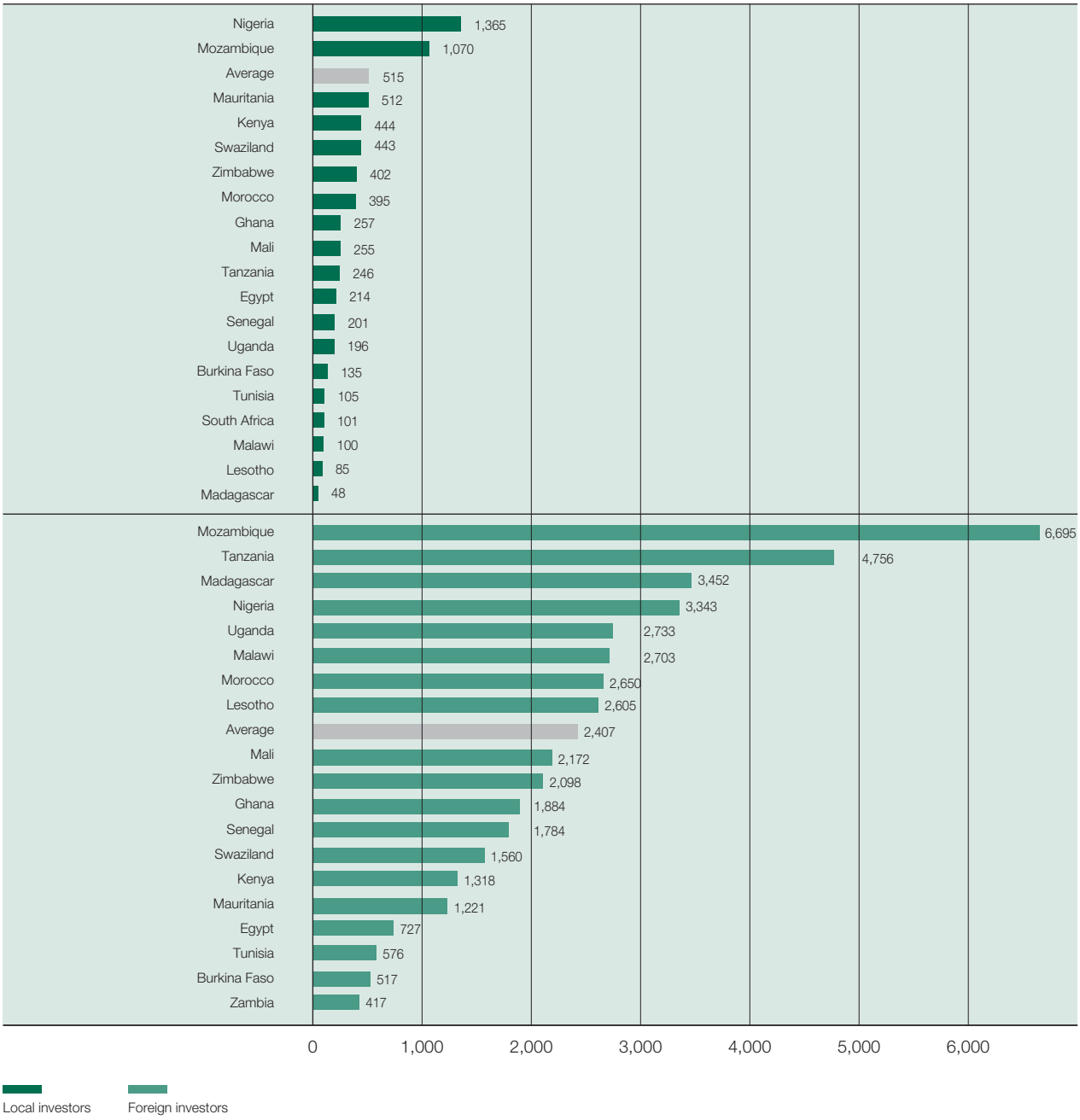
— not available

Source: Morisset and Neso 2002

In sum, when compared with other developing countries, African countries have not succeeded enough in reducing the number of restrictions and the costs entailed for investors. This discourages private investment and the shift from the informal sector to the formal sector. It also creates opportunities for corruption. The World Bank (2003) concludes that the high cost, whether in complexity or resources, deters entry into the formal sector, thus potentially reducing competition. In many African countries as well, restrictive regulations and practises are often aimed at generating rents for officials and favoured private agents or groups, constraining business activity in both agriculture and industry.

Figure 3.5 High cost per procedure of private investment in Africa

Cost per procedure, by investor type and country ($)



Note: Total costs are delays (converted into monetary costs) plus direct costs associated with administrative procedures in each country. Delays have been converted into monetary costs assuming that opportunity costs for local investors are equal to the number of days multiplied by the daily GDP per capita in the country.
Average of 31 developing countries

Source: Morisset and Neso 2002

Enabling environment for private sector development

Experts generally agree that many African countries have an enabling environment for the development of the private sector. More than a half of the experts surveyed in 11 countries said that the development of the private sector is always or usually enhanced by government policies that provide an enabling environment (figure 3.6). Only in Ethiopia, Chad and Kenya did less than 25% of the experts report that government policies always or usually create an enabling environment for the development of the private sector.

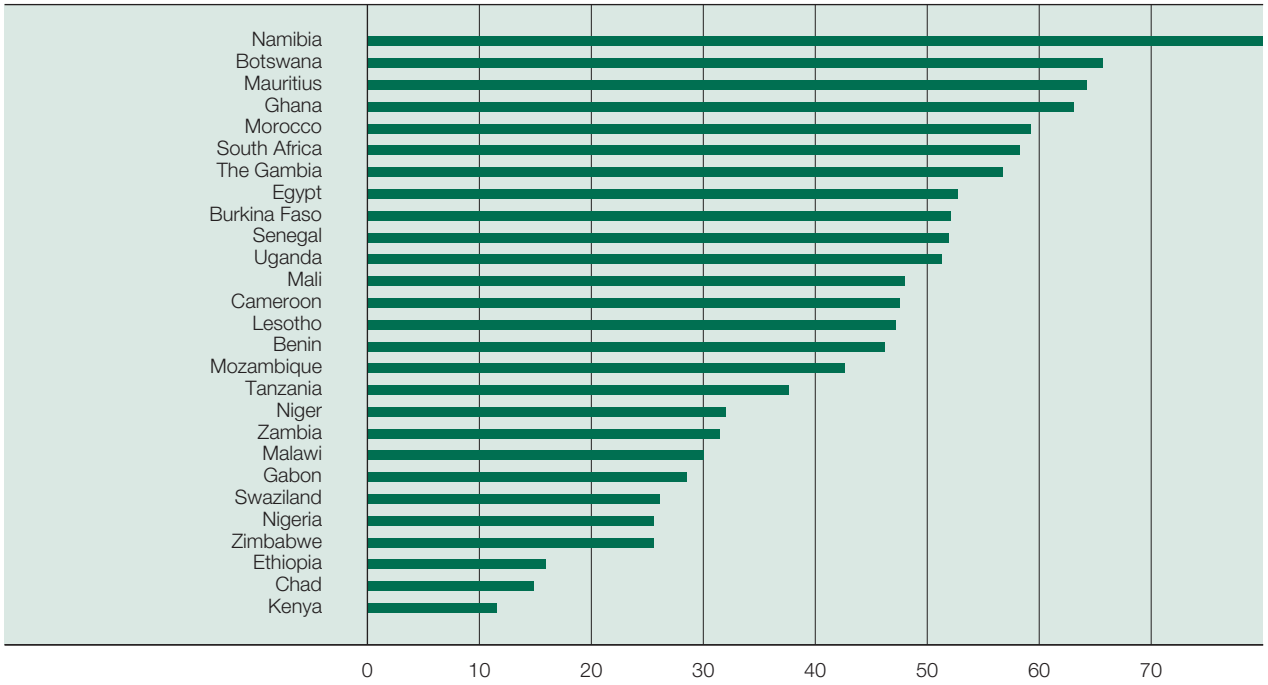
In sum, when compared with other developing countries, African countries have not succeeded enough in reducing the number of restrictions and the costs entailed for investors

Still, some countries have been relatively successful at promoting investment and developing the private sector.

For instance, the Tanzania Investment Center approved 1,624 investment projects worth nearly 5 billion shillings (about $US 4.4 million) between September 1990 and December 2000. These projects created 24,000 jobs. FDI in Tanzania grew faster after 1996, increasing from $150.86 million in 1995 to $192.8 million in 2000. The Uganda Investment Authority issued licences for 1,754 projects between 1992 and 1999. Of the 1,457 firms visited, 68.2% were operational, 7.2% were under implementation and 17.2% had been abandoned. The remainder had not yet been carried out or had been temporarily closed, or their status was unclear. Ugandans wholly owned 39.1% of the projects, 24% were joint ventures, and 36.2% were foreign-owned.

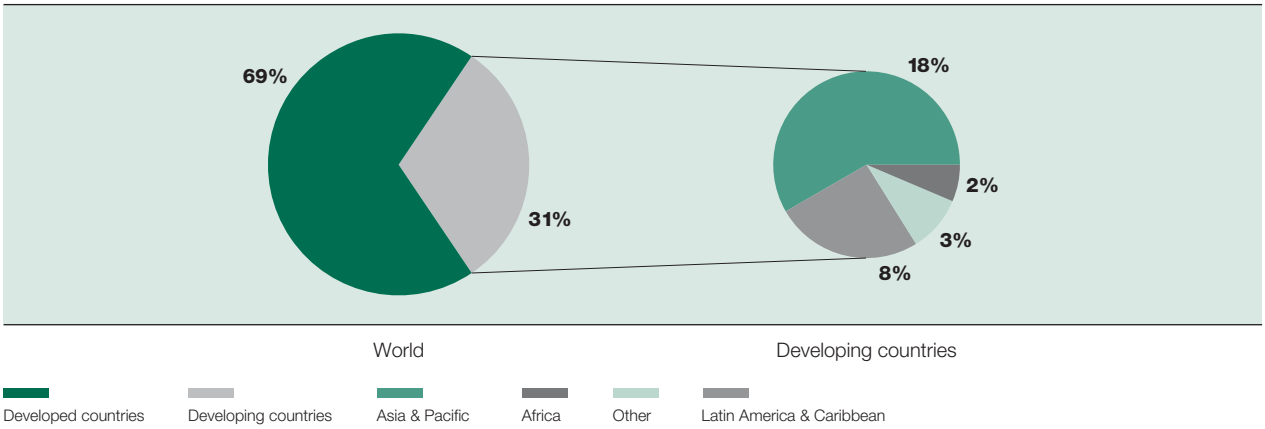
Figure 3.6 Expert opinion that the development of the private sector is always or usually encouraged by government policies that provide an enabling environment

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

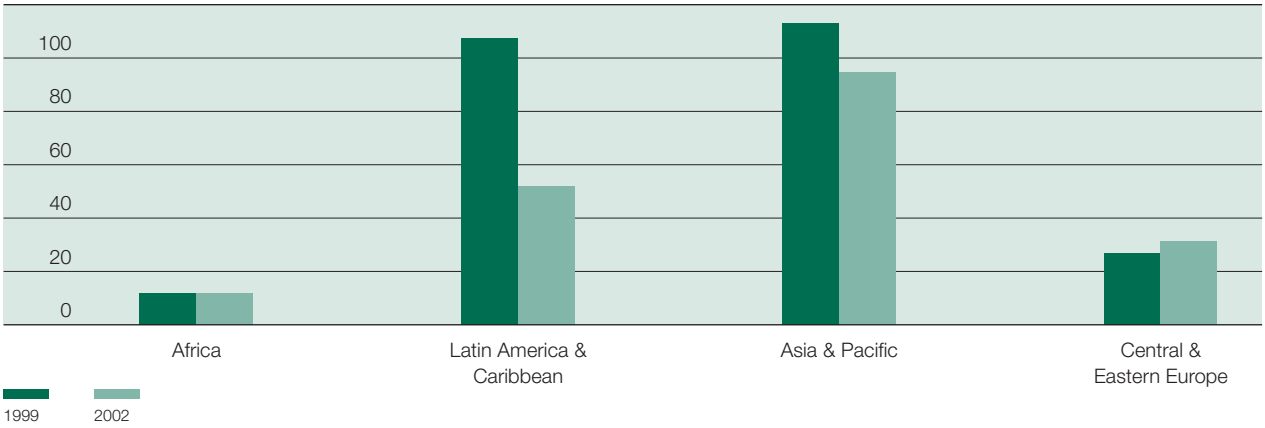
Figure 3.7 Foreign direct investment stock in developing countries, 2002
By region (%)



Source: UNCTAD 2004

Of the 31% of the FDI stock in developing countries in 2002, only 2% was in Africa (figure 3.7). Between 1999 and 2002 FDI flows to Africa remained about the same, while flows to Latin America and the Caribbean and Asia and the Pacific fell and flows to Central and Eastern Europe increased slightly (figure 3.8). Most striking is that in both years FDI flows to Africa were far less than the flows to other developing regions.

Figure 3.8 Developing countries foreign direct investment inflows, 1999 and 2002
By region ($US billions)



Source: UNCTAD 2004

FDI flows to Africa are concentrated in a handful of countries, most of them resource-rich or oil-producing

FDI flows to Africa are concentrated in a handful of countries. Three-quarters of foreign direct investment in 2002 went to 10 countries, most of them resource-rich countries, mainly oil-producing ones such as Angola, Nigeria, Chad and Algeria (table 3.2). The flow of foreign direct investment to Africa as a whole and to the top 10 countries fluctuated in 1992–2002. Given what is now known about investment in this and other mining sectors, these investments may not be good for the economies in the long run. There is abundant evidence that overdependence on extractive and depleting resources in the developing world often retards genuine, broad-based and sustainable development, crowds out local industry and agriculture and results in high levels of corruption, debt overhang, low productivity of capital, neglect of human development and poorly developed financial systems, which in turn lead to low growth rates and high levels of poverty and economic inequality (Soderling 2002).

The absence of a conducive environment for the development of the private sector is one factor that is responsible for the limited success by African countries in attracting FDI. In addition, country-specific factors hinder the growth of the private sector. Obstacles in Ethiopia include unfair competition from companies affiliated with the governing party, the high cost of land and bureaucratic and lengthy procedures for the acquisition of land. In Kenya, despite the government's stated intention of promoting investment-friendly policies, little has been done in practise to encourage the private sector, and the nature of governance is not very friendly to the private sector. Specific problems include the poor state and high cost of physical infrastructure, economic mismanagement, high taxes, corruption on the part of government officials, the lack of adequate and relevant information for investors and an inefficient judiciary that suffers from corruption, pressures from the executive and a huge backlog of cases in the courts.

Table 3.2 Levels of foreign direct investment inflows, by country, 1992–2002 ($ millions)

Country	1992–97	2000	2001	2002
Angola	304	879	2,146	1,643
Nigeria	1,402	930	1,104	1,281
Chad	27	116	453	1,030
Algeria	93	438	1,196	1,065
Tunisia	457	779	486	821
South Africa	1,045	888	6,789	757
Sudan	35	392	574	713
Egypt	820	1,235	510	647
Morocco	551	215	2,825	481
Botswana	-10	57	31	405
Rest of Africa	1,212	2,799	3,502	2,937
Africa total	5,936	8,728	19,616	11,780

Source: UNCTAD 2004

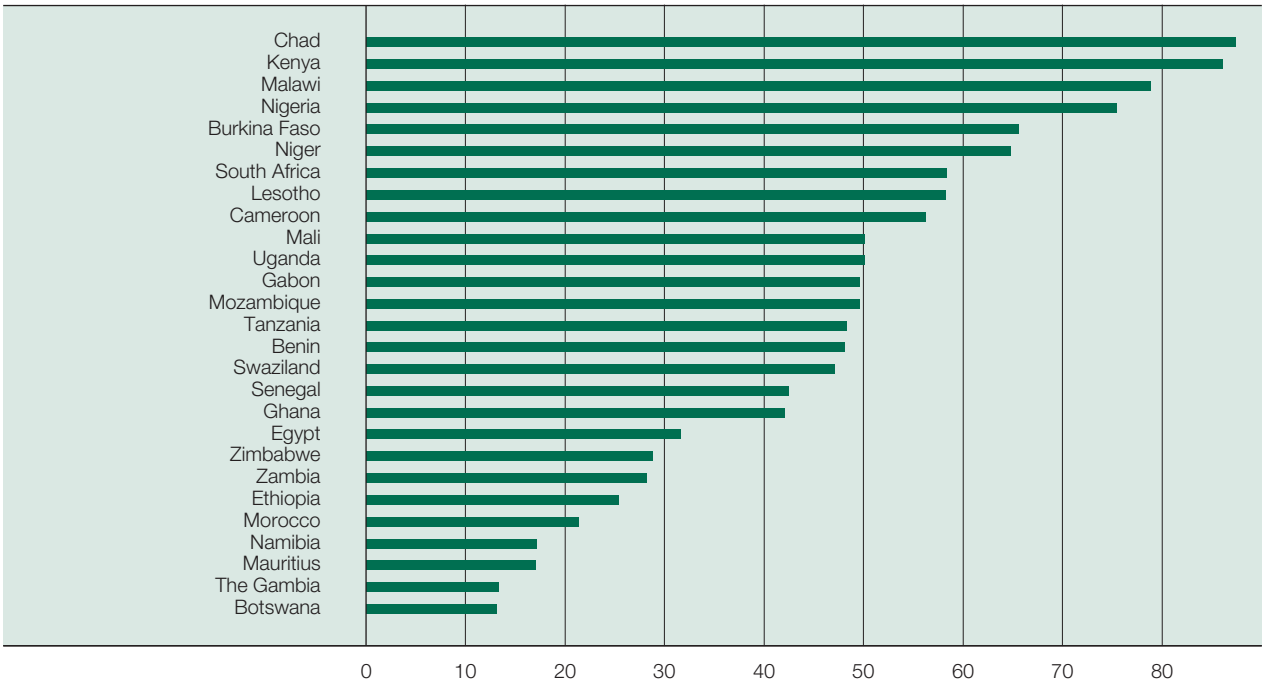
Insecurity has often been mentioned as a serious obstacle to private investment and growth in Africa. Only in Botswana, The Gambia and Zambia did more than 50% of the experts surveyed say that crime and insecurity are never or rarely obstacles to conducting business. In Ethiopia, Gabon, Mauritius, Morocco, Namibia, Zimbabwe and Senegal 25–50% of the experts surveyed gave the same response, while less than 25% in the remaining countries did. Crime and insecurity seem to be a major problem in Cameroon, Lesotho, South Africa, Niger, Burkina Faso, Nigeria, Malawi, Kenya and Chad, where more than 50% of the experts surveyed said that crime and insecurity are often or always obstacles to conducting business (figure 3.9).

The problem of crime and insecurity are part of the larger problem of political stability that affects many African countries. Limited government effectiveness and weak regulatory capacity are characteristic of many African countries and are additional hindrances in the development of the private sector.

The broad conclusion that emerges from this analysis is that many African countries have made serious efforts to strengthen their private sectors by providing fiscal incentives and other support measures, creating special institutions for the promotion of private investment, adopting measures to encourage the development of the informal sector, encouraging private investment in the informal sector and endeavouring to create an enabling environment for the development of the private sector.

Figure 3.9 Expert opinion that crime and insecurity are often or always obstacles to conducting business

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

The results in terms of investment flows, especially FDI, have been meagre, except for oil-producing countries and countries in North Africa.

Public and private partnerships

Neither the public sector nor the private sector alone can successfully address the problems of economic development, good economic management and corporate governance facing African countries. Close collaboration between the two sectors is therefore indispensable in creating a conducive environment. In addition to the direct measures to support the private sector, African countries have been creating more room for the private sector to grow by privatising public enterprises. More generally, they have been encouraging a sense of partnership between the two sectors and endeavouring to associate the private sector in economic decision making, especially in decisions that affect them. Privatisation has been slow in some countries, but progress is being made on the whole. The private sector is increasingly seen as a partner of the public sector, but the institutions and mechanisms for this partnership are weak.

The private sector is increasingly seen as a partner of the public sector, but the institutions and mechanisms for this partnership are weak

Efforts to develop infrastructure

The importance of a well-developed, reliable and inexpensive infrastructure for economic development in general, and for attracting private investors in particular, cannot be overemphasised. In fact, one of the crucial differences between developed and developing countries is the availability of physical infrastructure. Developing countries have long recognised this and have been taking steps to close the gap with developed countries. Until the 1980s, this was seen as preeminently the domain of governments, but with the shift to market-oriented economies many developing countries have tried to encourage the private sector to become more active, either wholly or in partnership with the government. African countries have been taking steps to improve their infrastructure through public and private investment, better maintenance of existing facilities and removing regulations and other restraints so as to improve efficiency and the quality of service in the sector. Progress has been made, but Africa still lags behind other regions in the availability and quality of infrastructure.

Ethiopia has substantially increased its budgetary allocation for infrastructure, and particularly the share of its allocation for roads increased from 1.5% in 1991/92 to 9% in 1994/95, but dropped to 4.9% in 1999/2000 due to increased defence expenditures. Government expenditures on roads and public works in Uganda went from 8.3% in 1999/2000 to 8.9% in 2001/02, and the share of government expenditures on water increased from 1.5% in 1999/2000 to 2.8% in 2001/02. Other countries that have strongly supported the development of their infrastructure are Benin, Kenya, Malawi, Namibia, Senegal and Swaziland.

African countries have been liberalising and encouraging private sector participation physical infrastructure, especially in energy and telecommunications. Since 1997 Kenya has been encouraging participation of the private sector in power generation. There are now five independent power producers in the country. In addition, in 1993 the government transferred the nonstrategic functions of the Kenya Railways

Corporation to the private sector and entered into operations and management contracts with private entities. These measures have reduced transit time and increased reliability of services. The government is planning to follow a similar strategy in maritime transport.

Senegal has continued liberalising and privatising its power and telecommunication subsectors, while Ethiopia has removed restrictions on private participation in energy generation, eliminated government monopoly in telecommunications in preparation for privatisation, increased the involvement of the private sector in transportation and privatised state-owned transport enterprises. Several African countries have also liberalised transport charges to attract private investment.

Progress has been made through public and private investment, better maintenance of existing facilities and removing regulations and other restraints—but Africa still lags behind other regions in the availability and quality of infrastructure

Despite these efforts, African countries have not attracted as much private investment in infrastructure as other developing regions. Private investment in infrastructure in developing countries rose from $14 billion in 1990 to $117 billion in 1997 and then dropped to $89 billion in 2000 due to reduced demand for infrastructure services that resulted from the economic crises in Argentina, Brazil and East Asia. Only 2% of the total private investment in infrastructure in developing countries in 1990–2000 went to Sub-Saharan Africa, while 49% went to Latin America and the Caribbean, 29% went to East Asia and the Pacific, 11% went to Europe and Central Asia, 6% went to South Asia and 3% went to the Middle East and North Africa (World Bank 2003). The overall investment climate in Africa, and the relatively low effective demand for infrastructure facilities, makes investment in them less profitable than similar investments in other developing regions.

Privatising state-owned enterprises

Perhaps the most important shift in economic policy in Africa since the 1960s has been the shift from a dominant if not exclusive reliance on the state for promoting economic development to an increasing acceptance of the importance of the private sector in the process. This shift was triggered by the economic crisis that African countries have been experiencing since the 1980s. The crisis was attributed largely to serious flaws in macroeconomic management and the failure to implement structural reforms and create a conducive environment for private sector–led economic growth. The collapse of the Soviet Union and the introduction of far reaching liberalisation and market-oriented reforms in Eastern Europe, Central Asia and China, as well as the remarkable economic achievements of the East Asian economies, persuaded African countries that they too should opt for economic strategies based on economic liberalisation and market-oriented reforms. The vehicles for this new strategy were the Stabilization Programs and the Structural Adjustment Programs that most African countries entered into with the International Monetary Fund and the World Bank in the 1980s and 1990s. A key feature of these programmes was the privatisation of state-owned enterprises and a sharp curtailment of the role of the state in directly providing economic and social goods and services.

By the end of 2000 African countries had engaged in 3,796 privatisation transactions valued at $7,950 million. Of the total number of privatisation transactions, 31% were in manufacturing, 23% in services, 21% in agriculture, 11% in trade, 5% in financial services and 9% in other sectors. The results varied considerably by country. South Africa accounted for 31% of the total value of privatisation transactions,

Zambia 11%, Côte d'Ivoire 10%, Ghana 8%, Senegal 5%, Egypt 4% and Ethiopia, Kenya, Morocco, Nigeria and Tanzania about 3% each (World Bank 2002).

African countries also differed in how they privatised their economies, in the institutions they created for privatisation and in their results.

After the Privatization and Commercialization Decree 25 was promulgated in 1988 Nigeria embarked on a programme of full or partial privatisation or commercialisation of public enterprises. Malawi embarked on an across-the-board policy of deregulation in 1998, and Tanzania launched a reform programme for state-owned enterprises in 1992 that was accelerated in 2000. Benin, Ghana and South Africa also embarked on programmes of widespread privatisation and commercialisation.

The main problem encountered by African countries in the privatisation process is that many state enterprises are not viable enough to attract private sector interest

In several African countries special institutions were created, for example, the Privatization Commission in Malawi. In Ghana responsibility for promoting public-private partnerships for the development of public infrastructure, community services and related facilities rests with a special unit in the Ministry for Private Sector Development. The unit assists in evaluating proposals, negotiating contracts and implementing projects between the private sector and central or local government authorities.

The success of African countries in privatisation varies. Malawi had privatised 45 companies valued at $270 million by late 2001, and in Tanzania 84% of state-owned enterprises in existence in December 2000 have been privatised.

The main problem encountered by African countries in the privatisation process is that many state enterprises are not viable enough to attract private sector interest. The capacity of many African countries to successfully carry out a privatisation programme, including restructuring enterprises, auditing their accounts and assets and negotiating their sale is also limited. Finally, in several cases, there has been strong opposition to the privatisation of state enterprises by workers, managers and consumers who stand to lose jobs and other advantages, such as access to subsidised goods.

Mechanisms for business competition

In general, African countries have been slow in adopting policies and putting in place institutions to ensure business competition. Among those that have or are in the process of instituting such policies are Botswana, Egypt and Senegal.

Botswana has a competition policy whose objective is to create an environment conducive to competition within the private sector. The privatisation policy adopted by the government in 1998 emphasised creating a competitive market and enhancing the performance of public and state-owned organisations. The Public Enterprise Evaluation and Privatization Agency was established to implement these policies.

Egypt is in the process of drafting a full-fledged competition law that contains provisions on absolute monopolistic practises, relative monopolistic agreements, mergers and acquisitions, restrictive business practises and anticompetitive government activities. But the draft law excludes certain sectors, such as public utilities, water, gas, petrol, electricity, trade unions and professional syndicates and export

associations with voluntary membership created to export or promote exports. The legislation also establishes an independent Competition Commission, with the power to impose penalties and other legal sanctions.

Senegal has also adopted legislation on pricing, competition and disputes. In addition, it has structures to combat anticompetitive practises and to strengthen and supervise the workings of markets. By contast, Ethiopia has a policy for creating an environment that facilitates competition, but it has no regulatory framework to safeguard against the emergence or exercise of monopoly power.

In Kenya there are concerns that economic liberalisation may encourage the private sector to use its new freedom to the disadvantage of citizens. Private companies have allegedly been importing expired and substandard goods and overcharging the public. There is a similar public perception in Zambia that economic liberalisation has not yet led to a fully competitive business environment.

Benin, Ethiopia and Mali, where the state dominated economic development, have taken positive steps to create institutions that facilitate effective collaboration between public and private sectors

Evolving partnership

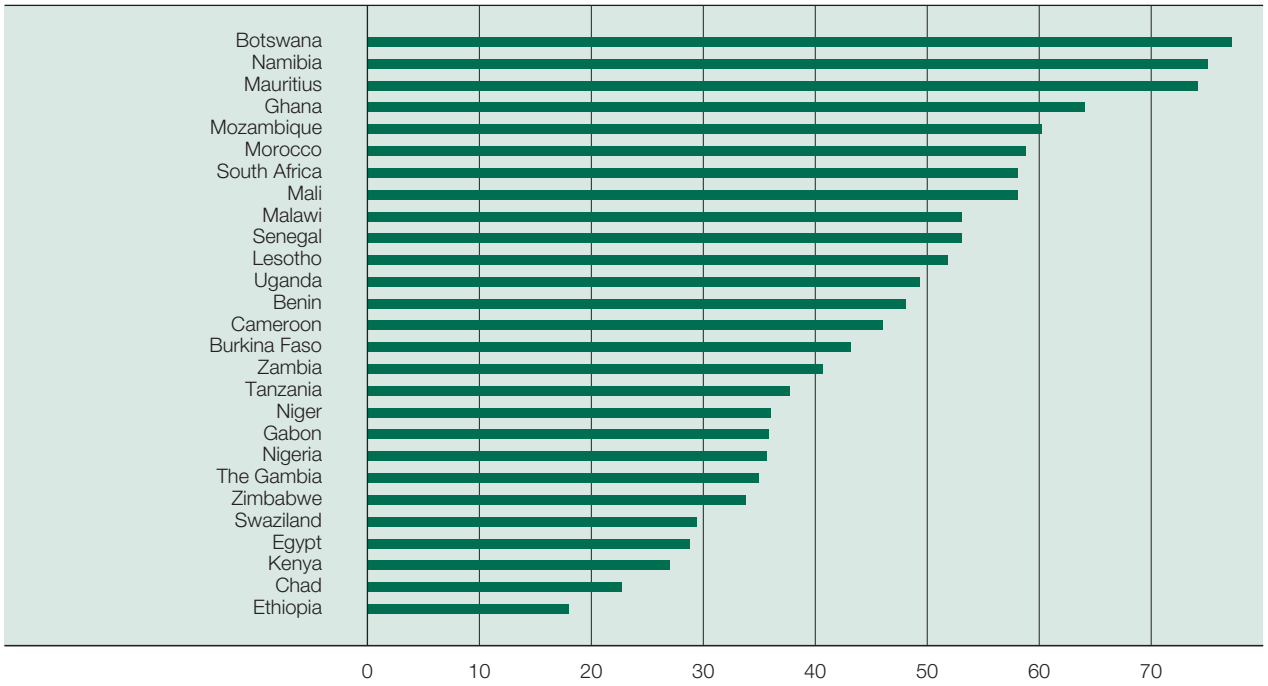
Although public-private partnerships are recognized as critical, they are not as effective as they should be because the necessary institutions and mechanisms are absent. In 11 countries more than a half of the experts surveyed said that the public and private sectors are effective partners in development with collaborative mechanisms that are effective or somewhat effective (figure 3.10). In 14 countries 25–50% said the same thing. Only in Chad and Ethiopia did less than a quarter of the experts agree. And more than 60% in these two countries said that the public and private sectors consider themselves partners in development but rarely collaborate or that they do not regard themselves as partners in development at all.

The relationship between the public and private sectors in Africa should be examined in the context of the fact that many African countries only recently shifted from state control over the economy to market- and private sector–driven strategies for economic development. It will take some time to change attitudes and practises prevalent in the past. It is also evident that a major hurdle in promoting partnership between the public and private sectors in Africa is the lack of effective mechanisms to ensure that the partnership is effective. This will also take time to fix and is part of the larger challenge of institution building and development facing African countries. Benin, Ethiopia and Mali, where the state dominated economic development, have taken positive steps to create institutions that facilitate effective collaboration between the public and private sectors.

Institutions to promote dialogue between the public and private sectors in Benin include the Chamber of Commerce and Industry, the Export Development Association, the Government/Private Sector Association and a component of the Private Sector Development Project.

In Ethiopia the government recently created the Public-Private Consultative Forum to promote dialogue between the two sectors. The private sector in Ethiopia considers this a step in the right direction but is calling for additional measures to facilitate dialogue between the two sectors. One demand that has been met is

Figure 3.10 Expert opinion on the private and public sectors as effective partners in development with effective or somewhat effective collaborative mechanisms
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

for meetings between the private sector and the prime minister at least every six months.

In 1977 Mali established two advisory committees: the National Committee for Economic Coordination is chaired by the prime minister and includes cabinet members and senior officials from the private sector, while the Committee for the Development of the Private Sector is chaired by the minister of industries and trade and brings together representatives of the ministries concerned with the private sector and representatives of the private sector. The Moderator of State Cooperation was established in 1999 to serve as the executive body of the two committees. The two advisory committees have not functioned properly because the decrees defining their operation have not been enacted. By contrast, the moderator's office has been more active and has organised several meetings and consultations between the government and the private sector.

An important dimension in the partnership between the public and private sectors is the extent to which the private sector is involved in economic decision-making, especially in decisions that affect the sector. Appreciable progress has been made by African countries in this area, especially considering that only in the 1980s did many African countries start acknowledging that the private sector has a positive role in promoting sustainable economic development.

More than a half of the experts surveyed in Benin, Botswana, Ghana, Mauritius, Morocco, Namibia and South Africa said that the government always or usually involves the private sector in policymaking affecting the development of the sector, 25–49% of the experts reported the same thing in Burkina Faso, Cameroon, Egypt, Gabon, The Gambia, Malawi, Lesotho, Mali, Mozambique, Niger, Senegal, Swaziland, Uganda and Zimbabwe, and less than 25% of the experts surveyed indicated so in Chad, Ethiopia, Kenya, Nigeria, Tanzania and Zambia. Only in Ethiopia and Kenya did more than a half state that the government rarely or never involves the private sector in policymaking affecting the development of the sector.

The evidence clearly shows that the partnership between the public and private sectors in African countries is not as strong as it should be. The reasons for this include the remaining suspicion and hostility towards the private sector, weak institutions and mechanisms to make the partnership effective and the fact that the private sector in most African countries, especially the indigenous private sector, is still weak and lacks the capacity, experience and analytical skills to become an effective partner of the public sector. Moreover, changes are needed in the attitudes and perspectives of indigenous entrepreneurs so that they can start looking beyond their narrow interests to what is good for the economy as a whole. Institutional development and capacity building in the private sector are also essential to build unity among entrepreneurs and to enable them to undertake the analytical work required to engage in a meaningful dialogue with the public sector.

As African countries move towards a private sector–driven market economy, good corporate governance becomes increasingly important if they are to succeed in attracting both domestic and foreign private investments

Protecting property rights and improving corporate governance

As African countries move towards a private sector–driven market economy, good corporate governance becomes increasingly important if they are to succeed in attracting both domestic and foreign private investments. African countries have made progress in these areas by protecting all types of property rights, improving access to land, labour and capital, safeguarding the interests of shareholders, holding the boards and managers of private companies accountable for their stewardship and ensuring that the private sector abides by internationally accepted accounting and auditing standards and practises.

While policies, rules, regulations and institutions exist to deal with these issues, weaknesses in the judicial system, political, social and cultural obstacles and poor institutional capacity have limited achievement in these areas. It will require some time before African countries become fully conversant with the various and subtle elements needed to effectively protect property rights and promote good corporate governance, establish the necessary institutions, rules, policies and procedures and ensure that the officials responsible for protecting these rights and obligations fully understand, subscribe to and are committed to their underlying norms and values.

Rights to land, property and labour mobility

Free access to land and property rights are recognised in the constitution and basic laws of almost all African countries. Expropriation by the government for the public interest is permitted under clearly stipulated conditions with the government

required to pay adequate and fair compensation. The difficulty lies in making sure that the government abides by these requirements. Most Africans are illiterate and unfamiliar with their rights. An even greater constraint is that fighting the government can be a very long and costly process for most Africans, with no guarantee of success because of the shortcomings in the judicial systems and the overwhelming power of the executive against the individual. Given these obstacles, the provisions in the constitutions and laws of African countries regarding the protection of property rights do not provide credible guarantees against the government.

Ownership of land is a sensitive subject, and several African countries have taken steps to restrict ownership of land, especially by foreigners

Mauritius has one of the strongest provisions on the right to own immovable property in Africa. Based on French law and jurisprudence, the civil code grants absolute right to enjoy and dispose of property. It contains strict rules on the illegal occupation of immovable property, including encroachment, squatting or abuse of contracts of tenancy. In addition, it provides for the "Right of Prescription", according to which any person who has had continuous and unchallenged occupation of a property for at least 20 years can apply to the court to be declared its legal owner.

In general, though, ownership of land is a sensitive subject, and several African countries have taken steps to restrict ownership of land, especially by foreigners. In addition, irrespective of the constitutional and legal provisions, even nationals sometimes face serious obstacles in gaining access to land in several African countries.

There is a bill before Malawi's parliament that limits ownership of freehold land, including commercial land, to Malawians in order to promote land redistribution and encourage the growth of entrepreneurship among Malawians. The bill has raised alarm among Asians, many of whom are resident aliens with British passports, and Europeans, who argue that it will discourage foreign investment, especially in light of recent developments in Zimbabwe regarding land owned by whites. In the commercial capital of Nigeria, Lagos State, aliens can only lease land for up to 25 years. Similar limits on foreigners owning and leasing land exist in many African countries, presumably to prevent nationals from being deprived of ownership

Ethnic, religious and other cleavages within African countries also effectively bar people from owning land outside their areas of origin. This has been particularly acute in Nigeria, where people from one part of the country face security problems from social groups and vigilantes in owning land, operating business and working in other areas of the country, despite the legal right of all Nigerians to trade and invest throughout the country. Similarly, in Ethiopia, which is a federation organised along ethnic lines, it is sometimes difficult for investors to operate freely outside their region.

An average of 49% of the households surveyed said that they have easy access to land, while 36% indicated that they do not and 15% offered no response. In 13 of 19 countries more than 50% of the households reported that they have easy access to land, while in 3 countries more than 50% of the households surveyed said that they do not. Only in Burkina Faso, Chad and Tanzania did more than two-thirds of the households surveyed say that they have easy access to land.

Both legal and social problems plague access to labour. In many African countries certain jobs are reserved for nationals. But foreign investors often require foreign

managers and technicians, leading many African countries to take measures similar to those taken by Benin and Kenya to attract foreign investment. But obstacles exist in access to semiskilled and unskilled labour, usually from neighbouring African countries, and security problems often limit the free movement of workers from one part of a country to another because of ethnic, religious or other social conflicts. Their solution depends on success in nation-building and regional economic, social and political integration among African countries.

The issues of access to land in all areas of the country, free movement of labour and ability of entrepreneurs to operate throughout the country raise questions on the extent to which governments facilitate the operation of markets in all parts of the country to create a truly integrated national economy. This is essential for the development of the private sector.

Only in Ethiopia and Chad did more than 50% of the experts surveyed say that markets are rarely or never facilitated by government policies and practices

African countries have a long way to go in facilitating the operation of markets in all parts of the country. The average share of the experts surveyed who reported that government policies and practises always or usually facilitate the operation of markets including the free movement of labour and capital in all parts of the country was only 44%, compared with 33% who said that government policies and practises do so only sometimes and 23% who said that policies and practises rarely or never do so. In eight countries more than 50% of the experts surveyed said that government policies and procedures always or usually facilitate the operation of markets (figure 3.11). Only in Ethiopia and Chad did more than 50% of the experts surveyed say that markets are rarely or never facilitated by government policies and practises.

Access to credit

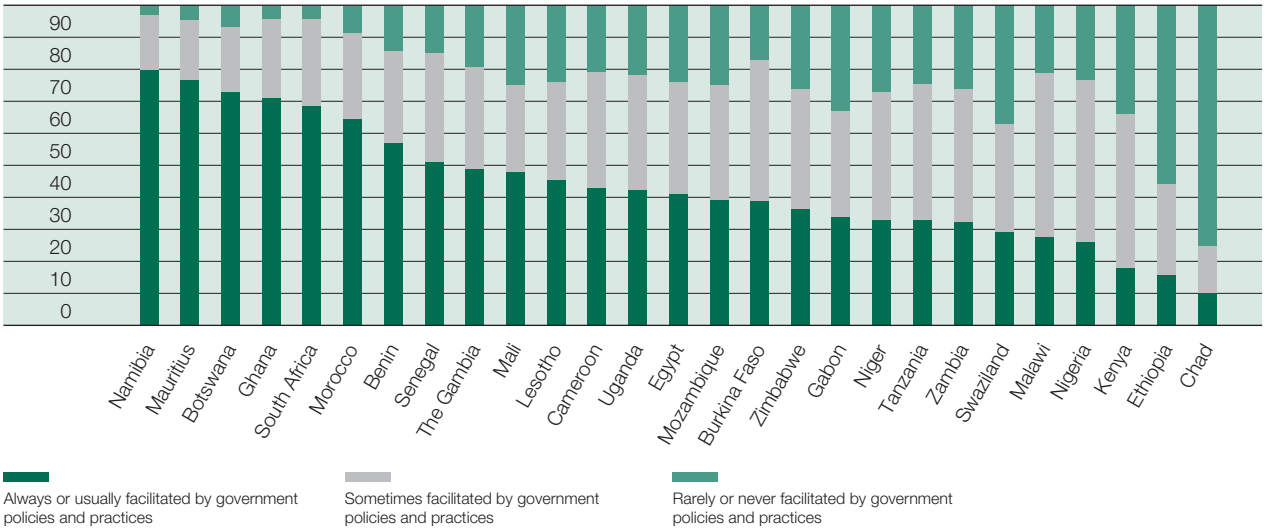
Liberalisation of the financial system figures prominently in the Structural Adjustment Programs that many African countries have been implementing since the early 1980s, and many of them have recorded progress. The financial sector, especially banking, in several countries has been opened to foreign interests, state banks have been privatised, and the financial sector has been deregulated and encouraged to operate according to market forces and sound banking practises. These reforms were expected to strengthen the financial sector and enhance access to capital, but the results have been disappointing.

Several African countries have created special institutions to provide credit to micro, very small and small enterprises as part of efforts to develop the informal sector. Several of these microcredit lending institutions, such as those in South Africa, have collapsed, while in many other African countries, inadequate financial resources, the lack of institutional capacity and political and other forms of external interference have made them ineffective. The only exceptions are those institutions financed by external donors.

More generally, banks in Africa suffer from several internal weaknesses. On the whole, they tend to be very cautious and avoid taking risks. They are inclined to shy away from long-term lending and concentrate instead on short-term lending for commercial purposes. This inherent conservatism is reinforced by numerous non-performing loans and cases of corruption, which are due to poor risk management, the absence of internal controls, outdated information technologies, high operating costs, high interest charges and poor customer service.

Figure 3.11 Expert opinion on whether government policies and practises facilitate the operation of markets[a] in all parts of the country

Share of experts surveyed, by country (%)



Note: a. Includes the free movement of labour and capital

Source: ECA governance survey of experts

The feeling is widespread in most African countries that the major banks, which are often subsidiaries of foreign banks, discriminate against nationals in granting loans

In addition to these internal shortcomings, there are several biases in the way banks operate in Africa. The feeling is widespread in most African countries that the major banks, which are often subsidiaries of foreign banks, discriminate against nationals in granting loans. Women in particular have difficulty gaining access to credit because of social and cultural reasons and because they often do not own property, especially land, which could be used as collateral. Rural areas have problems gaining access to credit due to the few bank branches that have been established there.

Given the difficulties in gaining access to credit from formal financial institutions, a wide range of informal financial intermediaries have emerged to cater to the capital needs of small and micro-enterprises, but their terms and conditions are often exorbitant. A more serious problem is that the absence of credit from formal financial institutions is an obstacle to the development and transformation of the informal sector to the formal sector.

Patents and intellectual property rights

Patents and intellectual property are important parts of property rights, and several initiatives have been taken at the international level to ensure their protection. African governments have also taken steps to protect these rights at the national level, signing many of the international agreements and adhering to international institutions for the protection of these rights. But enforcement of property rights leaves considerable room for improvement.

Mauritius and South Africa have several laws and institutions to protect patents and industrial and intellectual property, all of which are designed to protect rights and defend against counterfeit goods and the violation of trademarks. Benin, Ghana, Kenya, Malawi, Senegal and Swaziland have also adopted legislation and created institutions. In Malawi the Patents Office, under the Registrar of Patents, is responsible for the registration and protection of patents, while the Copyright Society of Malawi, under the Ministry of Sports and Culture, protects literary and artistic work. Similar arrangements are found in Benin, Ghana, Kenya and Senegal. In Ghana copyright protection, which started with literary works, art and music, has been gradually extended to cover sound recordings or phonograms, cinematographic works and choreographic works. Ghana has also started treating folklore as copyrighted work invested in the state and is planning to extend copyright law to cover cable systems and computer programmes.

Despite these legal provisions and institutional arrangements at the national, regional and global levels, the protection of intellectual property rights in many African countries is not very effective

Namibia lags behind other African countries in adopting legislation and creating institutions to protect industrial and intellectual property rights. But the Ministry of Trade and Industry is in the process of drafting intellectual property legislation for the protection of patents and trademarks. The ministry has also commissioned a feasibility study for the creation of a National Standards Board. Ethiopia lacks a comprehensive legislation for the protection of intellectual property but does have some legal provisions protecting literary and artistic work, inventions, industrial design and trademarks.

Underpinning these laws and institutions for the protection of patents and intellectual property in Africa are several international agreements to which African countries belong, including the Universal Copyright Convention, the World Intellectual Property Organization and the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is an integral part of the World Trade Organization. Other important schemes in terms of the legal protection they provide are the 1982 Harare Protocol on Patents and the African Intellectual Property Organization created in 1977.

Despite these legal provisions and institutional arrangements at the national, regional and global levels, the protection of intellectual property rights in many African countries is not very effective. One important obstacle is the long and bureaucratic procedures for applying for patents and copyrights, which discourage many people, especially local individuals, from applying. Equally important is the low public awareness of the importance of industrial and intellectual property rights. Many Africans simply do not know of these rights, even those who stand to gain from them. Others who know of them consider them to be purely legal and technical, with no importance for them or the economy as a whole, while others simply lack the resources to defend their rights. Finally, in several countries no agencies exist to enforce these rights, and where they do exist, they lack the capacity to be effective.

Shareholders' rights

Protecting the rights of shareholders and holding the directors of companies accountable for their stewardship is a crucial element of corporate governance and vital in creating a climate of trust and confidence that encourages individuals to

invest in companies. This aspect of corporate governance is therefore particularly important in countries that are striving to strengthen the private sector. The main shareholders' rights deal with access to information, participation in decision-making, equitable sharing in the profits of the company, protection of the rights of minority shareholders and the right to hold management accountable when it abuses its power. These rights are defined either in the Memorandum and Articles of Association of the company or in various legal texts.

Under Kenyan law shareholders have the right to vote to participate in and be informed of decisions concerning fundamental corporate changes

The Capital Market Law and the Company Law of Egypt have several provisions to protect minority shareholders from the majority and the management of companies, including the right to appeal for the suspension of resolutions of shareholders meeting in favour of a specific group, lodge complaints with the Companies Authority and request the authority to inspect any company and examine allegations against the directors or auditors. Any resolution of the general shareholders meeting that is against the law can also be nullified. The Companies Authority is an important institution for protecting shareholders' rights and holding directors accountable. With the approval of the owners of 50% of a company's capital, the authority can remove the directors of a company and file legal action against them. Members of the board of directors are not exempt from civil liability by virtue of resolutions of shareholders' meetings, and shareholders can claim damages from directors for damages suffered.

Under Kenyan law shareholders have the right to vote to participate in and be informed of decisions concerning fundamental corporate changes. Three institutions have been established to act as advisory bodies and watchdogs to ensure that shareholders rights are upheld and corporate bodies governed appropriately: the Private Sector Governance Trust, the Kenya Shareholders Association and the Center for Corporate Governance.

Ghana, Malawi, Mauritius, Morocco, Senegal and South Africa also have detailed protections of the rights of shareholders in various legal texts. These texts emphasise the right to information and monitoring rights, which cover the right to be provided with all relevant information on a company, the right to be informed about, participate in and vote at shareholder meetings, the right to be treated equitably by the management of the company and the right to appeal to the courts a decision by the management or the majority of the shareholders of the company. However, the protection of these rights is limited by several factors.

One difficulty in transforming legal rights into reality is ensuring that affected people are sufficiently motivated and have the resources to defend their interests. Mauritius, where small shareholders were long considered dormant, has made progress in this area. After changes in the legislation in favour of small shareholders and the formation of several associations, the situation has improved, and general meetings of shareholders are no longer a formality dominated by the directors. However, major obstacles still stand in the way of small shareholders exercising much influence over their companies. One is that even if they have 49% of the shares in a company, they have no impact on the selection of directors because each shareholder has only one vote. And there is no separation between the right

to vote for directors from the right to vote for auditors, making collusion possible between directors and auditors. Lastly, small shareholders face problems in going to court because even if they win and the company is directed by the court to pay legal fees, these fees are limited to 10, 000 rupees (about US$ 210) per lawyer, a paltry amount compared with the actual amount paid for such services by the company, company directors or shareholders. This has deterred many associations of small holders from going to court.

Laws on business contracts

Laws and arrangements for enforcing business contracts in Africa are part of the law of contract in effect in African countries. Given their colonial past, these laws are derived from British Common Law, French Jurisprudence or Roman-Dutch Law. A common element in all of them is the provision for enforcing business contracts, except if they are illegal, immoral or impossible to perform. In addition, they include provisions for debt recovery in case of breach of contract, including statutory power for the sale of charged property and mortgages and the appointment of receivers or managers in place of debenture holders.

The commercial legal system in Egypt is slow and cumbersome, as demonstrated by the fact that in the mid-1990s, the rate of resolution of commercial disputes was estimated at only 36%

Many of the laws for enforcing business contracts have not been amended to take into account changes made by the former colonial powers, much less the new circumstances and requirements of the country. This is the case in Kenya, whose contract laws were inherited from Britain and have since been repealed or amended. In addition, there are many gaps in these laws because new developments in the business world have not been taken into account. As a result, many of these laws do not provide adequate guidance to judges, who are therefore obliged to depend to a great extent on case law, especially from other Commonwealth countries, when faced with gaps in the law. To rectify this, the Kenya Reform Commission, under the Attorney General's Office, has embarked on reforming some of these laws with a view to adapting them.

The commercial legal system in Egypt is slow and cumbersome, as demonstrated by the fact that in the mid-1990s, the rate of resolution of commercial disputes was estimated at only 36%, compared with 80–100% in most developed countries. A main problem in debt recovery in the past was the failure to register real estate mortgages. This problem was addressed by the law on real estate finance in 2001, and a new law in 2002 simplifying the registration process for real estate, mortgages and other properties. However, the process of securing and enforcing court orders for the possession of collateral is very lengthy and can be very costly to the plaintiffs even if judgement is rendered in their favour. The process is also unclear because the effective enforcement of court orders related to debts secured by real estate and mortgages is very rare. Moreover, arbitration does not seem to enjoy more confidence than litigation does.

In Mauritius entrepreneurs can go to court in case of a breach of contract, but many consider this route to be long, tedious, costly and uncertain and prefer to resort to arbitration. Another option is to seek redress under the Convention on the Execution of Foreign Arbitration Awards, which Mauritius has been a party to since 1931.

To make progress in enforcing business contracts in Africa, several actions are needed. Laws must be updated and adapted to the current needs and realities of African countries, and the delay, cost and uncertainties involved in resorting to the courts for the protection of business contracts must be reduced through an overhaul of the judicial systems to make them more efficient and transparent and to ensure respect for the rule of law (see chapter 6).

To make progress in enforcing business contracts, laws must be updated and adapted to current needs and realities, and the delay, cost and uncertainties involved in the protection of business contracts must be reduced

Accounting and auditing standards and practises

Sound accounting and auditing standards and practises are key elements of good corporate governance and play an important role in promoting private sector–led growth and development. The advantages of applying internationally accepted standards and practises are numerous. These include ensuring that financial reports are prepared in a standardised manner, thus facilitating comparisons both within and across countries, encouraging a certain level of disclosure of important information to enhance investor confidence in the health of companies, promoting transparency, reducing the likelihood of misappropriation and simplifying the process of tax assessment.

To secure these benefits, many African countries, including Ghana and Malawi, have taken steps to prepare national rules and regulations on accounting and auditing based on international standards and practises, provide internationally recognised training in accounting and auditing, created professional organisations to make sure that accountants and auditors abide by internationally recognised standards and practises, and become members of international organisations devoted to regulating and ensuring good practises and standards by accountants and auditors.

In addition, in South Africa the Public Financial Management Act of 1999 created the Accounting Standards Board to set standards based on local and international best practises for the preparation of the annual financial statements of all departments and public institutions. Before South African companies can be listed in the Johannesburg Stock Exchange, they must prepare their financial statements according to the South African Generally Accepted Accounting Principles, which is based on the standards set by the International Federations of Accountants and International Accounting Standards Board, of which South Africa is a member.

The accounting and auditing standards and practises in Burkina Faso are derived from those in place for the West African Economic and Monetary Union (UEMOA), which has adopted several texts and established several structures to regulate the accounting and auditing practises in its member countries: the UEMOA West African Accounting Code, the Permanent Council on the Accounting Profession, the National Order of Accounting Experts and Chartered Accountants in UEMOA States, the National Council of Accounting Experts in UEMOA States and the Official Management Centers in UEMOA States.

There are shortcomings in several African countries in the legal and institutional arrangements for making sure that accounting and auditing are conducted on the basis of internationally accepted standards and practises. In some cases the problem is one of legal gaps. Another problem is the absence of formalised

arrangements and channels of communication with professional bodies outside Africa. In Mauritius, for example, the auditing profession is largely unregulated at the national level. Instead, there is reliance on professional bodies in the United Kingdom or India to regulate and ensure that accountants and auditors conform to the codes and standards of the professional organisations to which they belong. However, when there are breaches of the rules and ethical guidelines of these organisations, these violations are often not reported to the professional organisation, or the organisation is unwilling to sanction an overseas member without a formal reporting channel.

Many African countries have taken steps to prepare national rules and regulations on accounting and auditing based on international standards and practices

To address these deficits ECA (2002) has recommended that of the 70 codes and standards dealing with economic and corporate governance, African countries endeavour to observe as much as possible seven fundamental international, regional and domestic codes and standards as a minimum requirement. Four of them relate to corporate governance in general, including accounting and auditing. They are the OECD's Principles of Corporate Governance, the International Accounting Standards of the International Accounting Standards Board, the International Standards on Auditing of the International Federation of Accountants and the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision. Such compliance would represent a major step towards ensuring that internationally accepted practises of accounting and auditing are practised in the region.

Concluding remarks

African countries deserve credit for the efforts they have made to promote private sector–led growth and development, including granting a range of fiscal incentives to investors, establishing special institutions to facilitate and promote private investment, especially FDI, and supporting the private sector in general, especially pushing the informal sector to become part of the formal sector. These and other measures demonstrate that, in general, at the higher levels of policymaking, African governments have become more favourably disposed to treating the private sector as a legitimate and reliable partner in economic development and that they are taking steps to strengthen partnership with the private sector and associating the sector in decisionmaking that affects its development. In addition, African governments have continued efforts to expand and develop physical infrastructure to attract private investment and make it more profitable and efficient. In this respect, steps have been taken to privatise infrastructure facilities, especially in the energy and telecommunications sectors.

Several factors account for not attracting more FDI, among them the high administrative and financial barriers to investment, the absence of the capacity needed to translate sound policies into action, discrepancies between policy declarations and how these policies are implemented, difficulties faced by domestic entrepreneurs in gaining access to credit and political instability and high rates of crime. Inadequate protection of property rights, including patents, intellectual property rights and shareholders rights, difficulties in enforcing business contracts through the courts

and the failure of many African countries to ensure free movement of labour, access to land and the ability of entrepreneurs to operate freely in all parts of the country are additional obstacles to creating a conducive environment for the development of the private sector.

This suggests that incentives and inducements for private investors are not enough and may not in fact be the most appropriate measures. Broad issues of economic and overall governance, such as sound economic and public financial management and accountability and the integrity of the monetary and financial systems need to be addressed and issues of corporate governance must be tackled. While African countries are increasingly adopting internationally accepted accounting and auditing standards and practises, more effort is required. Improvements are also needed in internal control and audit to strengthen the independence of controllers and auditor generals and to ensure that the legislative bodies effectively oversee the activities of the executive and follow up on the reports of the controllers and auditor generals.

Partial, half-hearted and limited reforms are not likely to succeed. The reform effort must be all encompassing, and all aspects of governance, including political, institutional and legal, should be addressed simultaneously. This is a large and lengthy task that demands enormous perseverance and sacrifice from African countries and requires the wholehearted support of the international community to succeed.

References

Charmes, J, 1999. "Informal Sector, Poverty and Gender: A Review of Empirical Evidence." Background Paper for the *World Development Report 2000/2001: Attacking Poverty*. World Bank, Washington, D.C.

ECA (Economic Commission for Africa), 2002. *Guidelines for Enhancing Good Economic and Corporate Governance in Africa*. Addis Ababa.

———, 2004. "ADF IV Consensus Statement." Prepared for the African Development Forum IV, October 11–15, Addis Ababa.

Morisset, Jacques, and Olivier Lumenga Neso, 2002. "Administrative Barriers to Foreign Investment in Developing Countries." Policy Research Working Paper 2848. World Bank and International Finance Corporation Advisory Service, Washington, D.C.

Soderling, Ludvig, 2002. "Escaping the Curse of Oil? The Case of Gabon." Working Paper WP/02/93. International Monetary Fund, Washington, D.C.

UNCTAD (United Nations Conference on Trade and Development), 1996. *World Investment Report: Investment, Trade, and International Policy Arrangements*. Geneva.

———, **2003.** *World Investment Report: FDI Policies for Development: National and International Perspectives*. Geneva.

———, **2004.** *World Investment Report: The Shift Towards Services*. Geneva.

World Bank, 2002. *World Development Report 2002: Building Institutions for Markets*. New York: Oxford University Press.

———, 2003. *Global Economic Prospects and the Developing Countries: Investing to Unlock Global Opportunities*. Washington, D.C.

Institutional checks and balances

4

In Africa the executive has historically been the most powerful institution of governance. The tendency of the executive to monopolize power and abuse discretionary authority has been universally observed throughout the ages. And in various manifestations and degrees, so have the other institutions of governance. There are several reasons why the executive tends to monopolize power and discretionary authority. The executive initiates and enacts laws, rules and regulations, and ensures their compliance. It controls administration of the country, and with the support of the civil service is the main provider of the public goods and services, including security and defense, and ensures law and order. It formulates and implements national policies; and it controls major material and financial resources, mobilising people and providing employment. Clearly the executive has tremendous powers and discretionary authority at its disposal.

To ensure accountability and prevent abuses, though, its powers need to be constrained through checks and balances. They are essentially measures and mechanisms calculated to inhibit the tendencies for the excessive use of power and regulate the exercise of discretionary authority of the institutions of governance within the constitutional provisions and political culture of a country. Checks and balances are, moreover, intended to constrain the dominance of one institution, the executive in particular, over the other institutions and agents of governance. In a democracy good governance requires enduring and dynamic checks and balances between all the major institutions of government and their respective agencies.

The decline of executive dominance in Africa is due to several factors including the end of the Cold War, globalisation and constitutional and political demands and pressure from civil society organisations and the media

The national country reports found a trend of relative decline of executive dominance in Africa due to several factors—including the end of the Cold War, globalisation and constitutional and political demands and pressure from civil society organisations and the media. Many African countries have adopted constitutional measures and put in place administrative mechanisms to strengthen checks and balances where they are weak or do not exist.

The executive itself has adopted some of these measures in response to the exposure of its abuse of powers by the civil society organisations and the media and demands for accountability and transparency as well as in recognition of their importance. The main objective of this chapter is to demonstrate how much the executive in Africa has been sufficiently or effectively checked and balanced by its own initiatives, by the other branches of government and by civil society organisations and the media.

Separation of power allows for checks and balances

As discussed in chapter 1, the distribution of political power in a democratic state is determined by the constitution, principally by the doctrine of the separation of powers. How and for what purpose political powers are utilised is a product of the dynamic interactions between the constitutional provisions and the capabilities and political predispositions of the incumbents. This is particularly true for the executive.

One of the major challenges confronting good governance is how to effectively contrain the executive's power and creatively balance its discretionary authority while not diluting its ability to fulfil it constitutional obligations and political mandate effectively

A vast majority of the post-independence constitutions embody the principles of the separation of power. Most national country reports found that the constitution served as the foundation and basis for institutionalising the separation of powers among the legislature, executive and judiciary. For example, the constitutions of Malawi and Uganda outline the functions of each institution and prescribe that the parliament, the executive and the courts function independently. And the 1991 constitution of Mali provides for the separation of powers between the major institutions of governance, with a system of mutual and reciprocal monitoring between the legislature and the executive that further enhances the checks and balances in the governance processes.

However, over time these constitutional provisions—and the governance structures—were systematically weakened, revised, suspended or replaced with ones that had a concentration of power in the executive branch. Local governments were abolished in Tanzania and substantially weakened in Kenya. The executives in many of the countries surveyed have systematically eroded the checks and balances provisions in the constitution through various amendments or by suspending the constitution (as in The Gambia in July 1994). In other cases, Kenya, for example, executive-initiated constitutional changes gave too much power and discretionary authority to the executive to appoint members of parliament, chief justices, judges of the High Court and members of some watchdog organisations. The concentration of power in the hands of few, or in some cases one individual, undermines the notion of separation of powers. In addition, in many of the countries surveyed the power relation between the executive and the ruling parties, with parliament in most cases assuming a subordinate role, renders the legislature incapable of carrying out its oversight role. For example, in Egypt and Kenya the president as the chief executive can initiate bills.

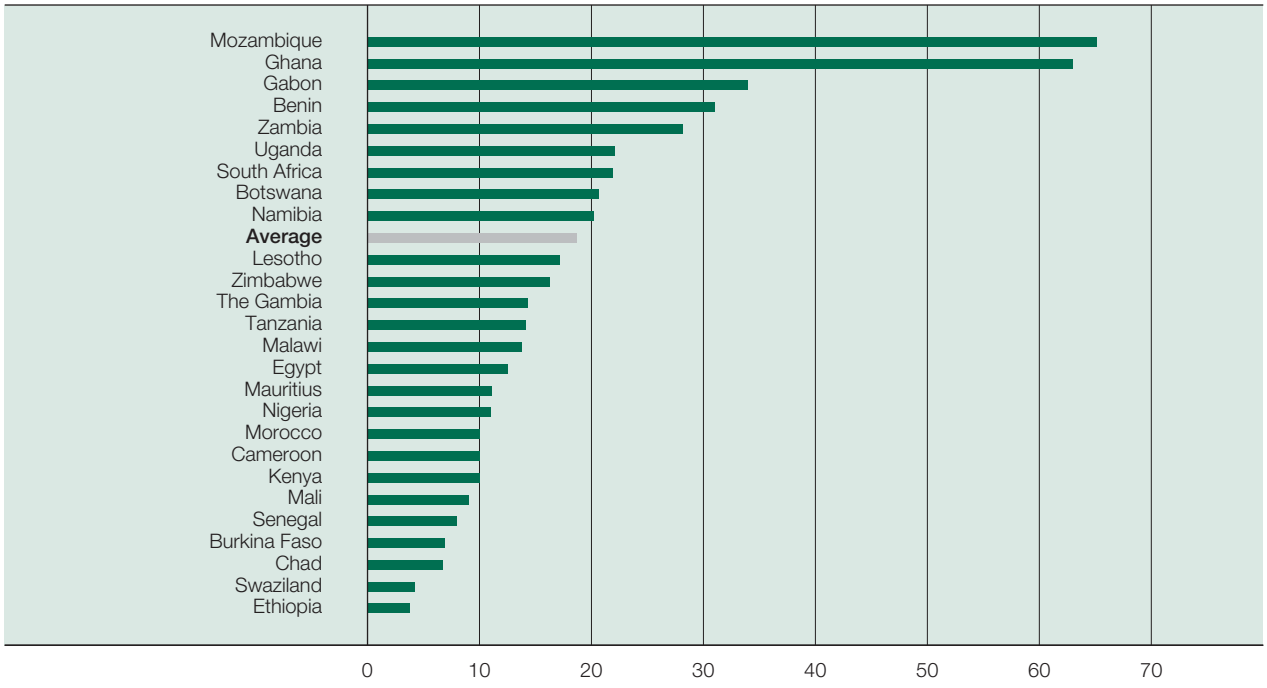
One of the major challenges confronting good governance in Africa is how to effectively constrain the executive's power and creatively balance its discretionary authority while not diluting its ability to fulfil its constitutional obligations and political mandate and to perform its functions efficiently and effectively.

For instance, after the inauguration of multiparty politics in Tanzania in 1992 a series of constitutional reforms were undertaken to promote good governance. Tanzania had been a one-party state with a dominant executive for more than two decades. During that period the ruling political party was the supreme governance actor. The legislature was virtually a rubber stamp, with no effective independence. The reforms guaranteed the independence of the legislature and enhanced its powers; it gained the power to approve the two top presidential appointments (vice-president and prime minister), to impeach the president and vice-president for

constitutional, ethical and other offences and to deliberate and ratify treaties and agreements to which Tanzania is party. Article 100 of the constitution entrenched the freedom of speech and opinion and empowered the legislature to debate and organise its procedure: "There shall be freedom of opinion, debate and procedure in the National Assembly and that freedom shall not be breached or questioned by any organ in the United Republic or in any court or elsewhere outside the National Assembly". The creation of a Parliamentary Service Commission in 1997 also enhanced the institutional capacity of the legislature and strengthened its constitutional independence.

With the constitutional freedom to organise and contest for political power, several political parties emerged and are now represented in the legislature where they enhance the checks and balances system. Opposition parties are now legitimate actors in the political processes because they are expected to challenge the government on various areas of its activities and responsibilities, as well as its approaches to governance and the manner in which it responds to the imperatives of accountability and transparency. The opposition parties are also likely to enrich the popular representation of the legislature, reflecting the societal diversities and perspectives and thus enhancing its authority and legitimacy to check and balance the executive. However, an average of less than 20% of the experts surveyed across all the project countries said that opposition parties in parliament have a strong influence on government policy, programmes and legislation (figure 4.1). Ghana and Mozambique are notable exceptions. How much the

Figure 4.1 Expert opinion on whether the opposition in parliament has a strong or moderately strong influence on government policy, programmes and legislation
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

opposition parties can influence government policy and check the executive depends on their capacity, the extent to which they can operate without hindrance or intimidation, the size of the party in power and the prevalent perceptions of the role of the political parties and the manner in which they operate.

Although opposition parties in parliament are now legitimate actors in the political processes, an average of less than 20% of the experts surveyed across all the project countries said that they have a strong influence on government policy, programmes and legislation

The recent movement towards democratisation has given rise to the need to amend constitutions and entrench democratic principles, as in Mali, South Africa, Tanzania and Uganda. Other countries have approached the constitutional reforms in terms of the amending formulas, making the process more open and participatory and creating a sense of ownership for the citizenry. Hence, countries are adopting constitutional amendment typologies ranging from flexible to highly rigid involving a combination of procedures including constitutional conferences, legally mandated bodies and public discussions. In some cases the process of amending rests firmly in the hands of the incumbent political elite, others have attempted to reflect a broader range of views.

The dominance of the executive is slowly waning

A gradual decline in executive dominance in Africa was discernable in the early 1990s, triggered by the spontaneous awakening of the civil society organisations and the African media's protests against authoritarianism, the abuse of power and corruption and demands for individual freedom, human rights and the right to participate effectively in the development and democratisation processes of their countries. A new dynamic political space was created that facilitated the exchange of ideas and experiences on a wide range of issues related to the existential African conditions. Since the 1990s a republican form of government has increasingly characterised African political governance systems, with functional systems of vertical and horizontal accountability. In the early 1990s African countries began to accept and use elections as the only legitimate process for assuming power and the foundations of accountability (table 4.1).

Today, a significant number of African countries are classified or considered as functioning democracies. There are a few "dysfunctional" democracies where the first generation of authoritarian leaders are denying the subsequent generation of citizens their basic freedoms and human rights and ignoring constitutional limits on power and discretionary authority, resulting in a serious socio-economic crisis (UNDP 2002). The underlying experience for individual countries is mixed with some good and bad stories as well.

For example, on a positive side, the popular opinion in Ghana, a country under civil authoritarian rule and military regimes for many years, is that the current administration has performed well, with 62% of the households surveyed rating performance as very good or good and only a small minority (12%) rating it as poor or very poor. There is widespread public optimism over the democratic prospects in Ghana. The overwhelming opinion—both among experts and ordinary citizens—is that a stable multiparty democracy is in place. Political parties are reasonably strong, and the electoral system is competitive, generating credible outcomes. But concerns

Table 4.1 Formation of the executive in African countries

Country	Fully competitive electoral process	Election in a dominant one-party parliament	Appointment by monarch after consultations	Appointment by monarch or ruler	Revolution or coup d'état
Benin	✓				
Burkina Faso	✓				
Botswana	✓				
Cameroon	✓				
Chad	✓				
Egypt		✓			
Ethiopia		✓			
Gabon	✓				
The Gambia	✓				
Ghana	✓				
Kenya	✓				
Lesotho	✓				
Malawi	✓				
Mali	✓				
Mauritius	✓				
Morocco	✓				
Mozambique	✓				
Namibia	✓				
Niger	✓				
Nigeria	✓				
Senegal	✓				
South Africa	✓				
Swaziland			✓		
Tanzania	✓				
Uganda		✓			
Zambia	✓				
Zimbabwe	✓				
Total	**23**	**3**	**1**	**0**	**0**

Source: ECA governance survey of experts

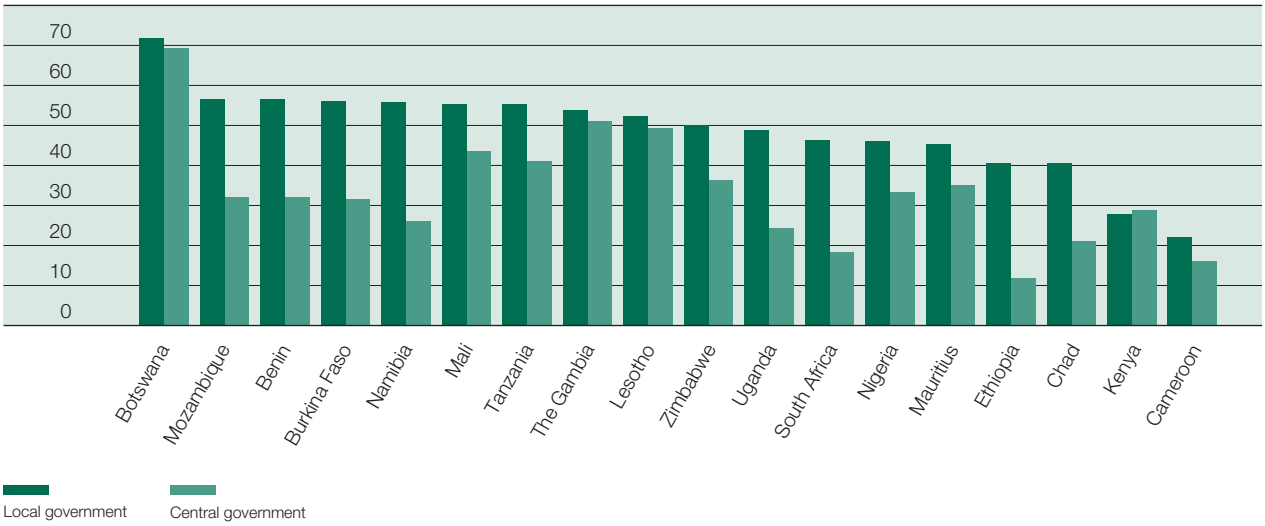
remain about unequal access to election resources and overexploitation of incumbency. The Electoral Commission enjoys high credibility, though it is perceived to be weak in terms of capacity to compel political parties to abide by electoral rules and in terms of having effective mechanisms for electoral conflict resolution.

Towards more checks and balances on the executive

Various reform measures have been undertaken to reinforce horizontal and vertical checks and balances on the executive, including constitutional, legislative and judicial reforms. In addition, the introduction of decentralisation and local government reforms as well as empowering civil society organisations and the

Figure 4.2 Household opinion that local associations are being consulted by local governments and the central government

Share of households surveyed, by country (%)



Source: ECA governance survey of households

media have emerged in many African countries. These organisations articulate the voice of the people, thus reinforcing checks and balances on the executive and its various agencies. For instance, households in all the countries surveyed indicated that local associations were consulted more frequently by local governments than by the central government (figure 4.2). This may be due to governance reforms and the effectiveness of decentralisation in enhancing empowerment and strengthening local ownership.

The existence of genuine consultation is a form of empowerment, facilitating public participation

The variation by country in the degree of consultation and public participation allowed by the political system in general is also largely reflected in the opinion of the experts surveyed. Where authentic and accessible mechanisms for participation are in place, consultations are likely to be widespread and effective. The existence of genuine consultation is a form of empowerment, facilitating public participation. Some governments find it useful for policy consultations, accountability and transparency, and thus establishing sound, productive and sustainable partnerships with civil society organisations and the private sector.

The executive has undergone major reforms in some countries, for example, Ghana, Mali, South Africa and Tanzania, and has taken some measures to reinforce both horizontal and vertical checks and balances in the governance system. The legislature, too, has been the subject of substantial reforms to enhance its capabilities to check and balance the executive and to ensure the observance of accountability and transparency by the government and its agencies in the performance of their duties and responsibilitie. Similarly, some African countries have put in place appropriate reform measures to strengthen the capacity of the judiciary to check and balance executive power and discretionary authority, as well as enhancing the effectiveness and integrity of the judiciary in the performance of its duties

Table 4.2 Governments with constitutional or official accountability agencies

Country	Ombudsman	Human Rights Commission	Anticorruption Commission	Antifraud or Antimoney Laundering Commission	Auditor General or Cours or Chambres des comptes
Benin		✓	✓		✓
Botswana		✓	✓		✓
Burkina Faso	✓				✓
Cameroon		✓			
Chad	✓		✓		
Egypt	✓				✓
Ethiopia		✓			✓
The Gambia	✓		✓		✓
Ghana	✓	✓			✓
Kenya		✓	✓		✓
Lesotho	✓	✓	✓		✓
Malawi	✓	✓	✓		✓
Mali	✓				✓
Mauritius	✓	✓	✓	✓	✓
Mozambique	✓		✓		✓
Namibia	✓		✓		✓
Niger		✓			
Nigeria	✓		✓	✓	✓
Senegal	✓		✓		✓
South Africa	✓	✓		✓	✓
Swaziland					
Tanzania	✓	✓	✓		✓
Uganda	✓	✓	✓		✓
Zambia		✓	✓		✓

Source: National country reports

and responsibilities, ensuring the observance of the constitution, rule of law and due process of law.

New institutions and mechanisms

The distribution of power among the different agencies of state is both a product of constitutional guarantees as well as an outcome of specific policies that define rules and norms in the public sector. As experiences in constitutional nation building in Namibia and South Africa have demonstrated, articulating the rules and norms to improve public sector service delivery is likely to have its ups and downs.

The Executive has undertaken several measures to ensure checks and balances both within its own institutions and in the wider governance system. The creation in most African countries of watchdog institutions, such as the ombudsman, human rights commission, auditor general, inspector of governance or minister for good governance, present perhaps the more significant examples of these initiatives (table 4.2). It is however important to ensure that these new institutions and

mechanisms are sufficiently resourced, managed and led by people with the appropriate expertise, experience and integrity (further discussed in chapter 5).

Benin, Nigeria, Tanzania, Uganda and several other countries are trying to build effective anticorruption commissions. They face the challenge of promoting good governance by creating mechanisms and processes that facilitate and reinforce both horizontal and vertical accountability. Vertical accountability means that agencies are accountable to other agencies within the same state hierarchy, as well as to voters. Horizontal accountability means that agencies are accountable to state agencies outside of their hierarchy in the state as well as to civil society and the media. Botswana, Namibia and South Africa have arguably gone the farthest in establishing an interlocking system of horizontal accountability in their numerous watchdog agencies.

In many African countries the lack of independence from the executive has reduced the effectiveness of watchdogs and advocacy agents in performing their functions

In Niger the Direction du Contentieux de l'Etat was established at the cabinet level, and a committee will be set up under the prime minister to explore strategies to fight corruption. In Morocco structures and institutions to fight corruption include the Special Court of Justice, audit committee and different commissions or services attached to some ministries. Mali set up a control unit in the administrative structures attached to the president's office to strengthen the fight against corruption. The judiciary and others ministerial offices are also involved in the fight against corruption. In Chad the financial general audit, the High Court of Justice and different legislative provisions provide instruments to fight corruption.

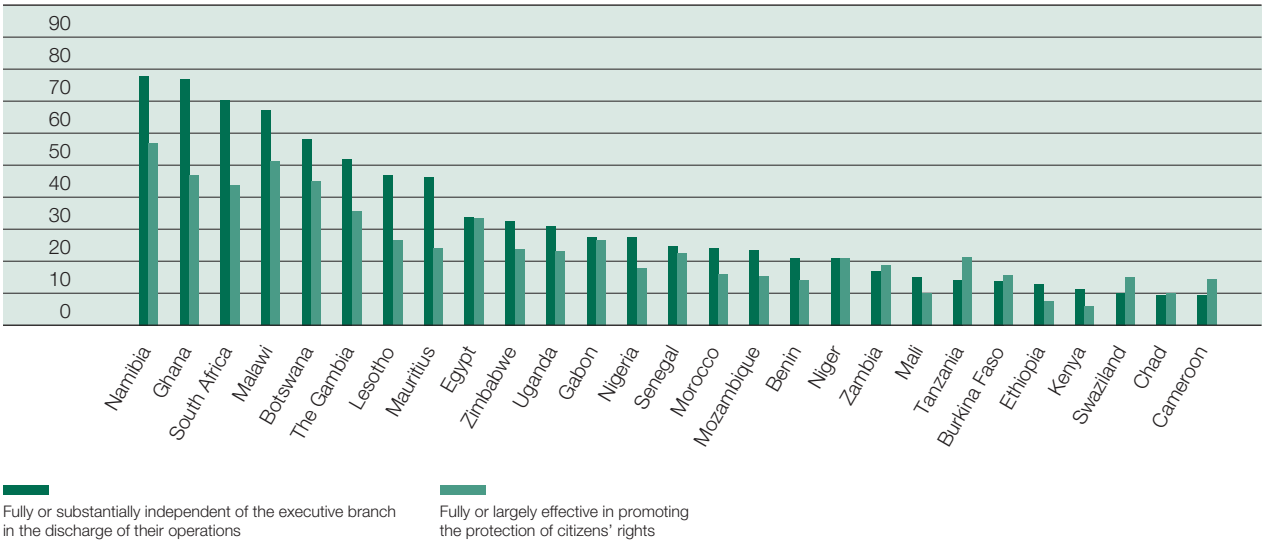
Nonetheless, in many African countries the lack of independence from the executive has reduced the effectiveness of watchdogs and advocacy agents in performing their functions. Although the numbers are growing slowly, there are very few African civil society organisations, including those in the media and the private sector, that enjoy independence from the executive commensurate with their goals and objectives. Figure 4.3 shows the independence of these organisations and their effectiveness, as measured by country experts. Only in Namibia, Ghana, South Africa, Malawi, Botswana and The Gambia did more than half the experts surveyed say that watchdog organisations enjoy substantial independence from the executive—and of those countries only in Namibia and Malawi did more than half the experts surveyed say that the organisations were effective.

Effectiveness of the legislature

In assessing the role of the legislature in checking and balancing the executive a distinction ought to be made between constitutional prescriptions and political realities. The constitution may impose the separation of powers functionally dispersing the three branches of government, but political realities on the ground may undermine or destroy the independence of the legislature. This can happen if the same political party controls the presidency and has a majority in the legislature. Or the constitution may grant the president the power to dissolve the legislature which perpetually threatens the legislators and thus undermines the independence of the legislature. In these circumstances it is very difficult for the legislature to

Figure 4.3 Expert opinion on the independence of watchdog organisations from the executive and their effectiveness in promoting the protection of citizens' rights

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

balance or regulate the discretionary authority of the executive—let alone check or censure its exercise of power.

The legislature has several important functions. It enacts laws, rules and regulations and appropriates revenue, allocates resources and oversees public expenditure. The legislature is supported by a system of standing and select committees. Through its finance and budget committees (or the ways and means, in some countries), the legislature ensures that budgetary allocations have been utilized according to the established procedures, for the intended purposes and in the most cost effective manner, accountable and transparent. The legislature uses other committees—select and standing committees—to debate specific issues related to economic, social, political or any other matters of national interests. It is thus in these committees that most of the checking and balancing activities of the legislature are carried out.

The constitution may impose the separation of powers functionally dispersing the three branches of government, but political realities on the ground may undermine or destroy the independence of the legislature

Another key function of the legislature is to act as a forum for the representatives of the people to articulate the needs and aspirations of their constituencies, express their grievances and anxieties, demand that wrongs done by the executive be rectified, debate public issues and policy options and take decisions in the interests and welfare of all the people in the country. The vast majority of parliaments in the study countries have gone through a fully competitive electoral process (table 4.3). Such a competitive system is likely to assure serious deliberations over policy matters and presumably will lead to decisions that address the interests and welfare of the people. In the parliamentary system of governance, "Question Time" is the most important opportunity for the legislators to confront the executive and

Table 4.3 Expert opinion on the parliamentary election mode

Country	Fully competitive electoral process	Appointment of a minority, free election for majority	One-party electoral system	One-party system with ruling party nominees	Appointment by head of state
Benin	✓				
Burkina Faso	✓				
Botswana	✓				
Cameroon	✓				
Chad	✓				
Egypt				✓	
Ethiopia				✓	
Gabon	✓				
The Gambia	✓				
Ghana	✓				
Kenya	✓				
Lesotho	✓				
Malawi	✓				
Mali	✓				
Mauritius	✓				
Morocco	✓				
Mozambique	✓				
Namibia	✓				
Niger	✓				
Nigeria	✓				
Senegal	✓				
South Africa	✓				
Swaziland				✓	
Tanzania	✓				
Uganda			✓		
Zambia	✓				
Zimbabwe		✓			
Total	**22**	**1**	**1**	**3**	**0**

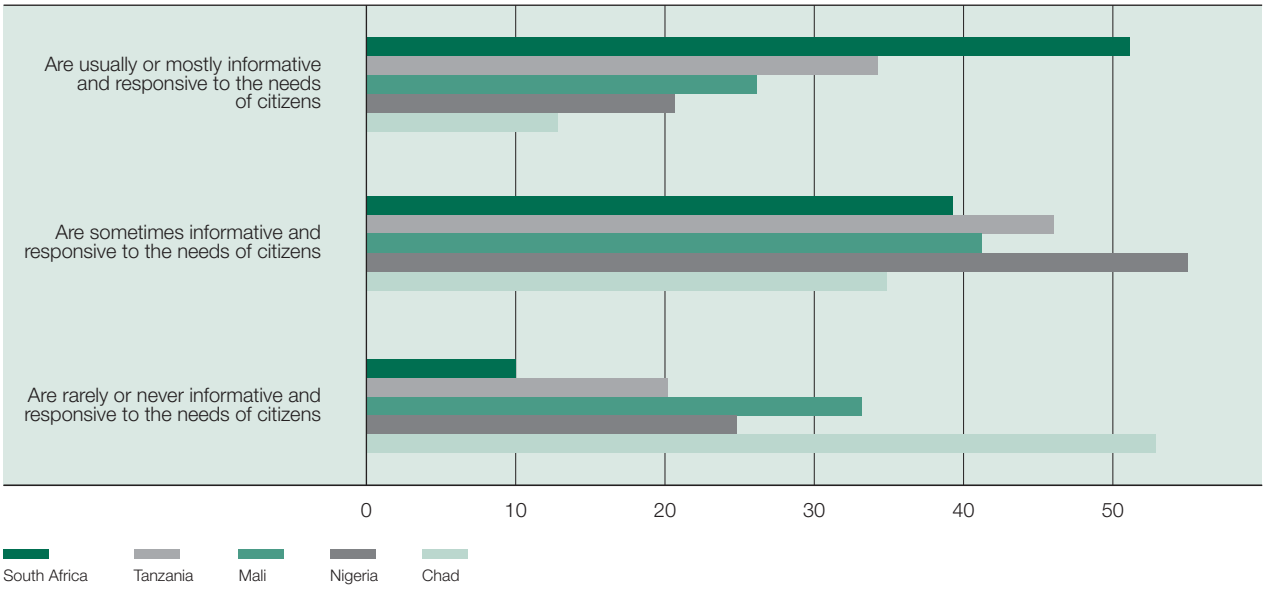
Source: ECA governance survey of experts

ask a wide range of questions related to the exercise of its powers and discretionary authority. The relevance of parliamentary debate in Chad, Mali, Nigeria, South Africa and Tanzania is mixed, but encouraging (figure 4.4). Given the incrementally opening of the political space and the enhancement of the legislature's capacity, the relevance of parliamentary debate is likely to grow.

As is discussed in Chapter 7, to effectively check and balance the executive, the legislature needs capacity, competence and independence. In terms of capacity, research facilities are highly important for helping legislators better understand issues

Figure 4.4 Expert opinion on the relevance of parliamentary debates in South Africa, Tanzania, Mali, Nigeria and Chad

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

that come before them. Competence comes in the form of information, knowledge and experience. Without capacity and competence, the legislature risks becoming dependent on the executive. But many legislatures in Africa are deficient in these capacities—they lack members who are well informed and able to introduce issues that are relevant to the needs and aspirations of their constituencies or the country.

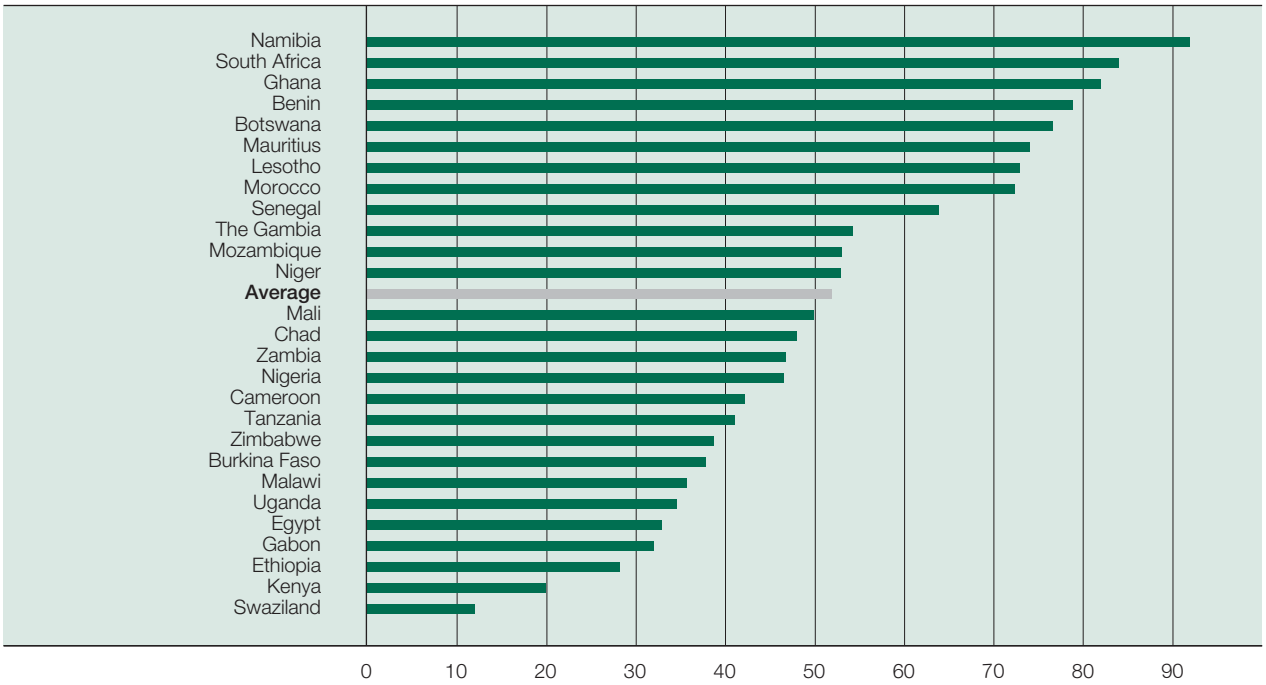
To effectively check and balance the executive, the legislature needs capacity, competence and independence — without which it risks becoming dependent on the executive

Legislative independence means that it is—and is perceived to be—free from interference from the executive, or civil society and private sector influences, including organised religious groups, ethnic organisations and big business, as well as forces from outside the country. An independent legislature is able to debate and pass laws and approve programmes that the legislators judge to be beneficial to the country as a whole. When the legislature lacks independence, its capacity to check and balance the executive is compromised, and its role in representing the people effectively is diminished. For example, the Kenyan constitution allows the president to recall or dissolve parliament, which makes the parliament dependent on the president's approval and therefore subordinate to the executive. A similar situation exists in Burkina Faso.

The survey of experts found that about a third of legislatures were perceived to be largely free from subordination to external agencies in all major areas of legislation. Namibia, South Africa and Ghana had the highest ratings (figure 4.5). Another third

Figure 4.5 Expert opinion that the legislature is free from subordination to external agencies in most or all areas of legislation

Share of expert surveyed, by country (%)



Source: ECA governance survey of experts

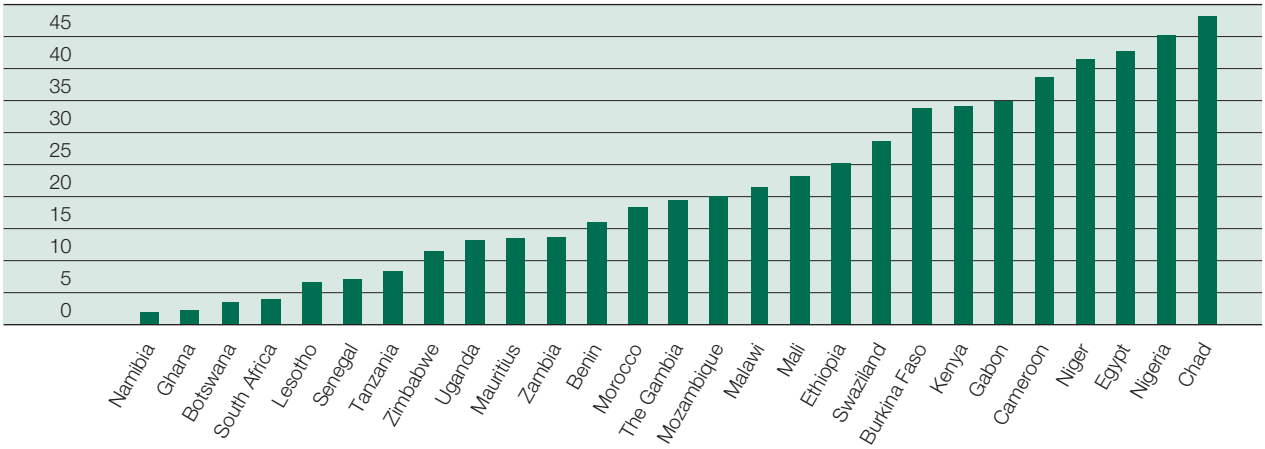
More than half of the legislatures in Africa are under various degrees of subordination to external agencies in all major areas of legislation

of the legislatures under study were perceived to be mostly free from subordination. These include Senegal, Mozambique and The Gambia. The rest were perceived to be at various levels of subordination—from some subordination to not really free from subordination to external agencies in all major areas of legislation. Swaziland, Kenya and Ethiopia ranked at the bottom. Overall, more than half of the legislatures in Africa are under various degrees of subordination to external agencies in all major areas of legislation.

Furthermore, issues of integrity and corruption status are necessary foundations for building moral authority and credibility. The perception of a legislature's integrity is critical for its own legitimacy and respect from the citizens. For example, the case of the Kenyan legislators to vote unanimously for large increases in remuneration and benefits for themselves in total disregard of both the economic situation of the country and without considering the interests of other sectors of society undermined the respectability of the legislature.

Notably very few legislatures were perceived by the experts as being largely or above corruption. Namibia followed by Ghana, Botswana and South Africa were found to be the least corrupt in Africa, while the legislatures of Chad, Nigeria, Egypt and Niger were perceived to be the most corrupt. The rest of the legislatures were perceived to be in various degrees of corruption (figure 4.6).

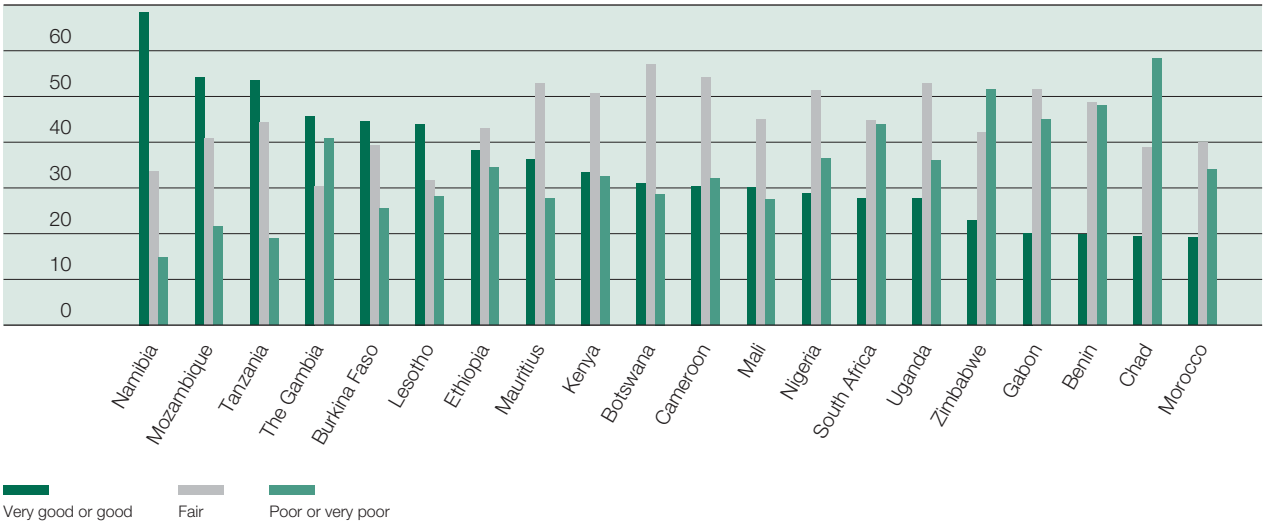
Figure 4.6 Expert opinion on whether the legislature is largely or completely corrupt
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

In terms of enacting laws, debating national issues, checking the activities of the government and in general promoting the welfare of the people, these duties and obligations are rarely performed with efficiency and effectiveness in many African parliaments. According to the household survey, in many countries the performance of the legislature is not highly rated albeit for various reasons. In descending order Namibia, Mozambique and Tanzania are largely the exceptions (figure 4.7).

Figure 4.7 Household opinion on the performance of the national assembly or parliament
Share of households surveyed, by country (%)



Source: ECA governance survey of households

According to the experts surveyed, rarely are the parliamentary debates informative and responsive to the needs of the people. The relative weakness may be attributed to strong executive power. In a relatively strong, parliamentary democracy like Senegal, for instance, the executive still presents virtually all the proposals for debate and legislation in the Assembly. However, in Benin, Mauritius, and some other countries that have adopted many of the institutions characteristics of republican democracy, parliaments have performed with increasing responsibility and effectiveness towards improving standards of transparency and accountability.

Effectiveness of the judiciary

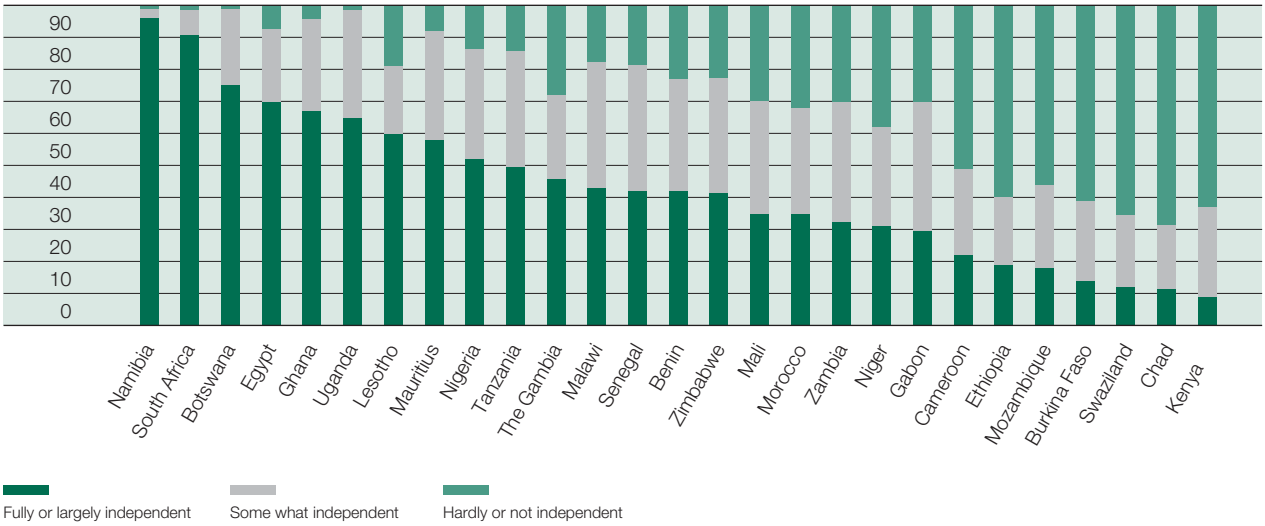
Despite the constitutional guarantees for an independent judiciary, however, the perception prevalent in most African countries is that the judiciary is only partially independent

The judiciary, as an organ entrusted in interpreting the law, also has an important role in the system of checks and balances. As with the other institutions of governance, the effectiveness of the judiciary depends ultimately on its level of capacity, which in turn depends on the relative strengths of the configuration of the appropriate capacity ingredients for the judiciary, as well as the environment in which the institution functions. Its role is in the formative stages in many African countries because their governments are still exploring and experimenting with the best ways to strengthen judicial independence. In Benin, for example, the decision to enforce the practice of judicial review during the 1994 budget battle has encouraged and deepened that country's progress towards establishing the rule of law.

The judiciary is the critical control agent for overseeing public sector finance, preventing administrative abuses through an effective ombudsman, preventing corruption and protecting the population from human rights abuses. While practically every African constitution provides for an auditor general or *les chambres des comptes* (national accounting courts), few are autonomous, fewer still submit regular reports to the legislature, and only a very small number of countries forwarded cases of possible corruption to state prosecutors.

Independence of the judiciary means that judges and magistrates are secure in their positions to dispense justice uninterrupted or interfered and cannot be dismissed or intimidated for taking a position against the executive or for making decisions that might have an adverse impact on the executive. Without independence, the judiciary is subject to the whims of political leaders and their changing priorities. Independence of the judiciary is generally an entrenched constitutional provision. Despite the constitutional guarantees for an independent judiciary, however, the perception prevalent in most African countries is that the judiciary is only partially independent. Namibia, South Africa and Botswana led the rest of Africa, with 75% or more of experts surveyed saying that the judiciary was fully or largely independent from the other branches of government (figure 4.8). The perception of the impartiality of the magistrate or judge deciding the issues is as important as the process of adjudication. Justice must not only be impartial, but it must also be seen as impartial. In more and more African countries judicial independence is becoming the norm, with independent judiciaries reviewing laws and actions by the executive and the legislative branches to determine their legality.

Figure 4.8 Expert opinion on independence of the judiciary from other branches of government
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

The capacity of the judiciary to review laws is a crucial check on the executive. In Africa this capacity varies widely depending on the levels of competence in the judiciary and the degree of independence from the executive, as discussed in chapter 7. The greatest single impediment to this capacity is insufficient resources. Most judiciaries lack the financial means to engage staff in research, documentation and analyses of briefs, which can enhance judges' understanding of the development and changing role of law in the continent that is rapidly changing. In Malawi the shortage of funds is a major factor in limiting the ability of the judiciary to operate effectively. A shortage of resources is also a substantial problem in Mali, where individuals detained for crimes must often wait extended periods for court personnel to write the decisions rendered in court. In Kenya a more insidious structure sometimes exists where in the executive has created a system characterised by paying off judges directly. Given the norms that have evolved in the social interactions that inform judicial practices, changing Kenyan institutions will take years. The most significant problem in Benin is the lack of access to courts and a resulting shift to popular justice familiarly called a "vindicate populaire".

The perception of the impartiality of the magistrate or judge deciding the issues is as important as the actual impartiality of the process of adjudication

South Africa is among the countries that have developed a capacity to review laws and provide effective checks on the executive. Its system of five subprogrammes in which cases are heard effectively provides access to courts and justice. The only major problems cited include a lack of motivation among prosecutors and a brain drain of talented legal minds to the private sector.

Botswana has problems of overburdened courts that have resulted in a shift of cases to customary courts that now handle more than 80% of the country's caseload. In Ghana the accessibility and legitimacy of courts for citizens has become

very difficult as well; mediating conflicts therefore is often devolved to the locality and traditional justice. Customary law has the same status as the common or statute law. In fact, in the hierarchy of courts, customary law is described as one of the courts of the country. Customary law structures are also part of resolving disputes. Alternative dispute resolution (ADR)—which may include negotiation, mediation, conciliation, arbitration, and a hybrid of any one of these processes—is generally believed to have been the norm in pre-colonial Africa. Efforts are now being made to institutionalize ADR in Ghana's legal system.

Access to the customary courts is increasingly popular as they are free, local languages are used, and people understand the procedures that are based on local culture. Hence, the ability to review laws and apply them consistently throughout the country is ensured by traditional courts. These examples demonstrate how some African states have responded successfully to low levels of capacity despite high levels of demand.

Botswana has problems of overburdened courts that have resulted in a shift of cases to customary courts that now handle more than 80% of the country's caseload

For instance, the lack of resources in Malawi has seriously overburdened the courts. One consequence of this is that a third of the prison population is on remand. In Kenya a judge may be assigned as many as 43 tasks a day—23 of them hearings. This renders the costs of litigation prohibitively high. In these circumstances, corruption is likely to be endemic and the judicial system inefficient. These examples are indicative of the problems of delays in judicial proceedings on the continent, impeding the delivery of justice (access to courts and judicial corruption are further discussed in chapter 6).

Several institutional deficiencies and other factors have limited the effectiveness of the judiciary:

- Few African countries have independent law review commissions and those that do have not been able to upgrade laws, rules and regulations in response to domestic socio-economic changes and the challenges of globalisation. Most of the laws in many African countries are archaic, with their origins in the colonial period and colonial authoritarian objectives. They need to be reviewed and repealed or amended to reflect current needs.
- The existence of "executive-minded" judges has also undermined the effectiveness of the judiciary. Because of the political consideration in their appointments these judges tend to be sensitive to the interests of the executive and thus not totally impartial in their deliberations and decisions.
- The use of foreign languages in court proceedings and other legal transactions have tended to restrict the dispensation of justice to poor and illiterate people, to whom both the laws and the medium in which they are transmitted are incomprehensible.
- Although Judicial Service Commissions exist in several African countries, they tend to be ineffective because their roles are primarily exhortative and not executive. They are rarely able to sanction judges who are corrupt or who consistently make unsound or poor judgements.

Clearly, serious attempts have been made and measures taken to enhance the capacity of the judiciary, reinforce its independence and strengthen its effectiveness. These measures include ensuring the application of the relevant qualifications, experience and professional ethical standards in the recruitment, appointment and promotion of judges as well as improvements in remuneration and living and working conditions of the judges and magistrates.

The national country reports suggest that while on the whole the performance of the judiciary is improving, its effectiveness in many African countries is still restricted. There are a notable few countries at the top where the effectiveness of the judiciary could be characterised as very high and a distinct few at the bottom with virtually ineffective judiciaries—but the majority are in the various stages of improving the effectiveness of their judiciaries.

Civil society organisations' independence from the state is critical to their ability to operate autonomously, exposing abuse of power and reinforcing some accountability on the government

Effectiveness of nonstate actors

Civil society organisations' independence from the state is critical to their ability to operate autonomously, exposing abuse of power and reinforcing some accountability on the government. A blossoming of civil society organisations in Africa suggests that perhaps the pendulum of relations between the state and its citizens has finally swung away from the state-centric big government to people-centred good governance (Mohiddin 1997; Bierschenk and Olivier de Sardan 1998). However, it is difficult to generalise since different countries have reacted to a growing number of policy-oriented, advocacy, human rights and anticorruption civil society organisations with different strategies.

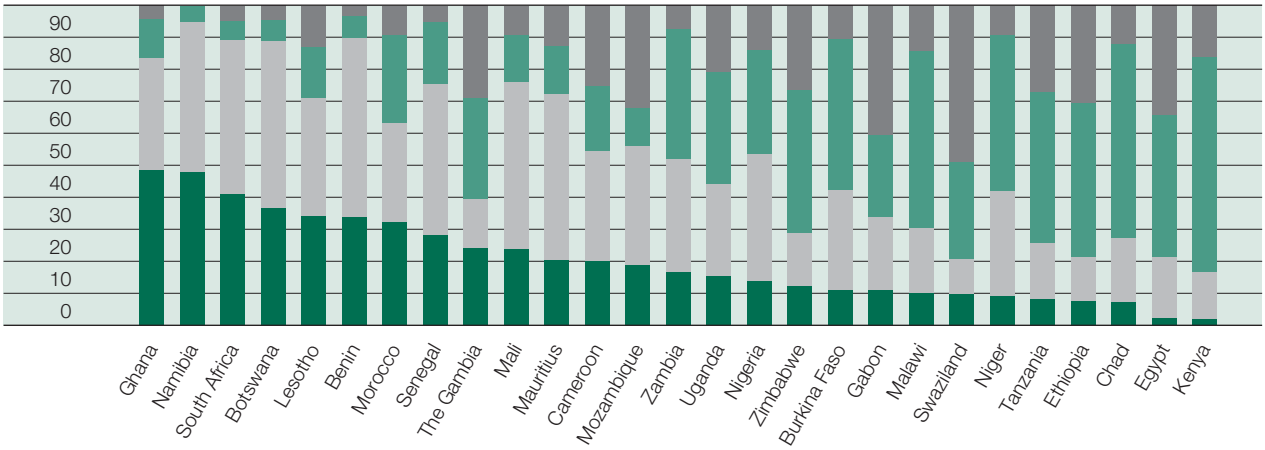
Some countries, such as Benin, Nigeria and South Africa, have granted civil society organisations considerable autonomy to pursue their goals within the confines of existing laws. Managing civil society organisations has been left to particular ministries, and their activities are seen in general as a contribution to the development processes. Other countries assemble civil society organisations into corporatist arrangements where peak associations represent the interests of nonstate actors in consultation and collaboration with the state and other groups. The Botswana High Level Consultative Council is the best example of this particular strategy. Finally, a small group of African countries severely limits the activities of civil society organisations through a combination of control by the state, strict laws that limit freedoms of association or outright repression.

There has been a proliferation of watchdog organisations throughout the continent, and on the whole the national country reports found that they have been effective in protecting citizens' rights. Ghana, Namibia, South Africa and Botswana received the most favourable ratings from the experts surveyed on civil society's degree of independence from the state; Kenya, Egypt and Chad received the least favourable ratings (figure 4.9).

Civil society organisations' influence on policies and programmes

The influence of civil society organisations on policy formulation and implementation varies according to the laws and practices in a given country. As noted, there

Figure 4.9 Expert opinion on degree of civil society independence from the government
Share of experts surveyed, by country (%)



Encouraged by the government to function independently of the state or ruling party and to grow into strong centres for empowering social groups

Allowed by the government to function independently of the state or ruling party but not encouraged grow into strong centres for empowering social groups

Allowed to function independently but subject to being banished or harassed whenever there is disagreement over government policy

Allowed to function under fairly or very strict guidance and control of the government

Source: ECA governance survey of experts

The growth of civil society and the media is due partly to the opening of political spaces and independant initiatives to take advantage of newly available opportunities and partly to the initiatives of some African governments to recognise their roles

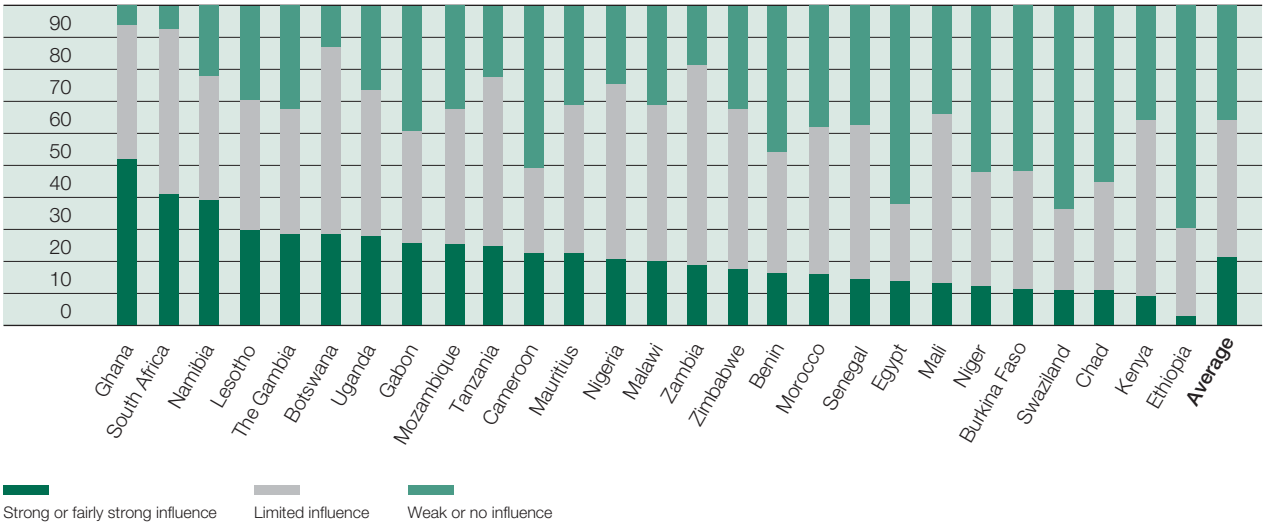
is a wide range of government attitude and latitude towards civil society organisations and the kind of environment in which they are permitted, and some instances encouraged, to function and grow into powerful centres for empowering the citizenry. Capacity to influence policy is thus contingent on the degree of independence that civil society organisations enjoy, and the willingness of the executive to permit nonstate actors a voice in policy formulation. Bratton and van de Walle (1997) found a close correlation between high levels of participation in associations and democratisation in Africa.

The average across project countries is that 21% of experts felt that civil society organisations had a strong or fairly strong influence on government policies and programmes, while 43% deemed it fair and 36% weak or nonexistent. In Ghana and South Africa, however, more than 40% the experts surveyed said that these organisations have a strong or fairly strong influence, meaning that they have a crucial role in exposing the abuses of power and promoting democracy and good governance (figure 4.10). By contrast, in Ethiopia, Chad and Egypt more than 60% of the experts surveyed said that civil society organisations had a weak or no influence on policies and programmes.

There are many civil society organisations in Africa that engage in advocacy, watchdog activities and the promotion of accountability and transparency whose contributions are recognised and appreciated. Some of these civil society

Figure 4.10 Expert opinion on the influence of civil society organisations on government policies and programmes

Share of experts surveyed, by country (%)



Source: Morisset and Neso 2002

organisations have links or partnerships with international nongovernmental organisations with similar goals and objectives. Transparency International has chapters across Africa, and its members often demand transparency and accountability with mixed success. In Benin the *Front des Organisations Nationales Anti-Corruption* (FONAC) has functioned as a watchdog agency. A similar civil society forum in Senegal is linked to Transparency International and demands transparency in official business. In South Africa a range of semi-public agencies promotes transparency and accountability through special investigating units.

The availability of mechanisms and processes enabling the people to exchange views and experiences, articulate and promote their interests is an important part of good governance

Effectiveness of the media

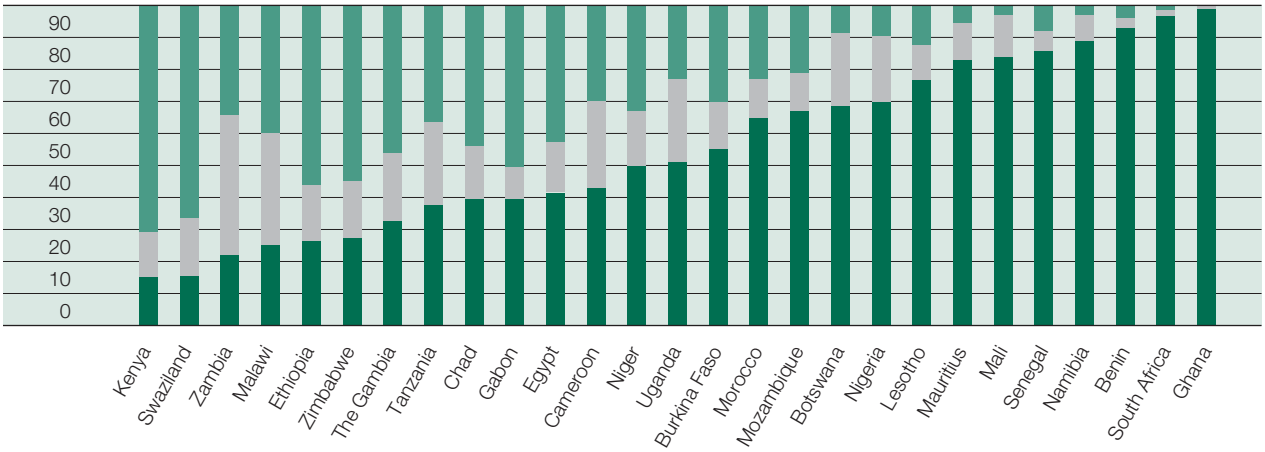
As covered in chapter 1, the growth of civil society and the media is due partly to the opening of political spaces and independant initiatives to take advantage of newly available opportunities and partly to the initiatives of some African governments to recognise the roles of these groups and positively respond to their demands to play effective roles in development and democratisation.

An independent media contributes to an autonomous and active civil society, while vibrant associations keep media in check as well. The media inform and educate the public and provide avenues for nonstate actors to publicly make criticisms or objections to government policies or actions—critical components of a functional democracy. It reinforces accountability and transparency. The availability of mechanisms and processes enabling the people to exchange views and experiences, articulate and promote their interests is an important part of good governance.

In the course of the 1990s and beyond, an independent media became increasingly common in much of Africa. There has, in fact, been an explosion in the

Figure 4.11 Expert opinion on the independence of the mass media

Share of expert respondents, by country (%)



Operate within a free and competitive environment where rights are never or only infrequently violated by the government or ruling party

Operate within an environment where mass media rights are frequently violated by the government

Operate within an environment where freedom of expression is under threat or under state control

Source: ECA governance survey of experts

Private ownership of the media is crucial because it facilitates the dissemination of information and the expression of views and opinions and enables people to expose abuse of power and insist on accountability and transparency of the government

emergence and operation of the media in Africa. Many African governments are increasingly becoming tolerant of criticism. There are very few countries where the media is under strict government control or the influence of the ruling party. But there are some exceptions. In Kenya and Swaziland 85% of the experts surveyed said that the mass media operate within an environment where freedom of expression is under threat or under state control or where rights are frequently violented (figure 4.11). Ghana is a marked contrast. The 1992 constitution protects the freedom and independence of the media and specifically states that the press and media should not be subject to control or interference by the executive. This constitutional provision has created the perception of a free press, reflected in the expert survey results with 99% of respondents saying that the media operates within a free and competitive environment.

Media ownership and operation have also generated much interest. In much of Africa the government owns at least a few of the newspapers published in the country. But private ownership of the media is crucial because it facilitates the dissemination of information and the expression of views and opinions and enables people to expose abuse of power and insist on accountability and transparency of the government. In Namibia all newspapers are privately owned, which enhances considerably their independence and ability to check and balance the executive and expose abuse of power and corrupt practices in the country. As in all countries with a free press, the media occasionally reports on government excesses, which leads to tensions with the state. While most people in Mauritius perceive that the press is

free, the Independent Broadcasting Authority Act of 2000 places formal restrictions on who can own newspapers and on the content of their reporting.

The media in any democratic society always has uneasy and sometimes confrontational relationships with the government. This is largely because the media on occasions publish and disseminate information that the government might prefer to ban, restrict or control. Nonetheless, as the media in Africa gains influence and comes under fewer restrictions, it may very well be the product of improved capacity of journalistic professionalism and its veracity in reporting.

The general picture shows that the impact of civil society organisations and the media on governance in Africa has grown considerably since the 1990s

In Ethiopia, questions of limits on the freedom of expression continue to concern civil society organisations. The governments of Benin, Botswana, Mali, Nigeria and Senegal are also grappling with the concepts of libel that are relevant to their respective circumstances. For example, the Botswana government tried to draft the Mass Media Communications Bill over the objections of many journalists who saw it as a limitation on the freedom of speech. This tension between a freedom to write opinion and protecting the rights of citizens from innuendo and libel is not exclusive to Africa.

Concluding remarks

Many African countries have taken the appropriate measures to institute checks and balances where they do not exist and to strengthen them where they are weak. These measures have entailed major constitutional reforms, the making of new constitutions and the creation of new institutions, mechanisms and processes for strengthening checks and balances. Some measures have been taken at the executive's own initiatives in recognition of their importance in strengthening the institutional capacities and others by the other branches of government. These include decentralisation and local government reforms, dispersing power and strengthening local governance in order to empower the people at the grass roots level.

Civil society organisations, too, have been vigilant and active in exposing abuses of power and discretionary authority, demanding accountability and transparency from governments. One major characteristic of Africa at the beginning at the 21st century from that distinguishes it from the mid-20th century is the existence of vibrant civil societies and a vigilant and active media.

Evidence from the national country reports—from places as varied as Benin, Kenya, Mali, Nigeria, Senegal, South Africa, Tanzania and Zambia—suggests that where there are strong, well-organised and sufficiently resourced civil society organisations and an independent vigilant media, public accountability and transparency are observed and checks and balances on the executive have the required impacts. Similarly, where strong and independent legislatures exist, legislators are able to challenge the executive, making it accountable and imposing checks and balances on its powers and discretionary authority. The way forward is to ensure that gains so far made are not withered away, that they are further strengthened, as well as exploring other possibilities of promoting good governance in the rapidly globalising world.

References

Bierschenk and Oliver de Sarda (eds), 1998. "Les arenas locales face à la decentralisation et à la démocratisation. Analyses comparatives en milieu rural béninois", in *Les Pouvoirs au village : le Bénin rural entre democratisation et décentralisation*, Paris, Kathala.

Bratton, Michael, and Nicolas van de Walle, 1997. *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective.* New York, NY: Cambridge University Press.

Institutional effectiveness and accountability of the executive

5

The executive occupies a strategic position in the governance study because it constitutes the fulcrum of the policy process in terms of formulation and implementation. In addition, it is at the centre of the disbursement of economic resources appropriated by the legislative arm of government. As such, the executive is at the nerve centre of service delivery to the people and the major agency through which the tangible dividends of democracy are actualised. But the performance of the executive with regard to the provision of public services depends largely on its institutional capacity, effectiveness and acculturation to the values of public accountability. When this arm of the state is weak, with little institutional capacity and accountability, the government tends to perform poorly, especially in providing basic public goods.

Institutional capacity of the executive is central to designing and implementing government policies and to aggregating the general interests of the people

This chapter focuses on six major dimensions of institutional effectiveness and accountability of the executive: institutional capacity, transparency and accountability, corruption, policy coherence, service delivery in terms of access, affordability and quality of public services dispensed by the executive and response to the HIV/AIDS crisis and the governance challenges arising from it. All these parts are interlinked and mutually reinforcing. There can be no institutional effectiveness when capacity is lacking. And there can be no efficient service delivery where there is no institutional capacity or accountability.

Institutional capacity

Institutional capacity of the executive is central to designing and implementing government policies and to aggregating the general interests of the people. Institutional capacity depends on the quality, calibre and legitimacy of the elected executive and the cabinet (ministers, commissioners and the like) and on the character and quality of the bureaucracy, which is the result of policymaking and institutional memory. A well institutionalised and developed bureaucracy can assist and strengthen a weak elected political authority. But a weak bureaucracy will likely undermine the lofty goals of good political leadership. State capacity and its development depend on four main factors. First is the quality of its leadership and the professionalism of its civil service machinery. Second is the degree of popular legitimacy, which, in turn, depends on the representativeness of the system. Third is the nature of the remuneration and training for the civil service or the public sector. A poorly remunerated workforce is less likely to be motivated. Fourth is the centre-local power relationships designed to facilitate local participation and networking with organs of the

civil society in policymaking and efficiently implementing and delivering services to the people.

The emphasis here is largely on the institutional capacity of the bureaucracy or the public sector and how it affects the performance of the executive.

Quality of the executive and the public service

Recruitment of the executive is usually through a political process and depends on the nature of the governmental system. Under a presidential system of government the president is directly elected by the people, as are the governors at the regional or state levels. Under a parliamentary system the president or prime minister is elected or appointed from the parliament and responsible to it. The quality of political leadership depends largely on the nature of the political elite, the party system, the mode of leadership recruitment and selection in the parties, the minimum standards set for elective leadership positions, the prevailing moral ethos and values in society and the extent of adherence to organisational rules and procedure by the leadership.

The selection process for civil servants must be based on the criteria of merit and public interest — not on political influence and patronage or nepotism

The nature of the public sector has fundamental implications for the performance of the political leadership and the executive. Professionalism, discipline and technical skills are core issues in administrative competence and capability. No subjects are of greater concern to the effectiveness of government machinery and individual civil servants than those affecting appointments, promotion and discipline. The machinery set up by the government to regulate appointments, promotions and discipline should, therefore, attract and retain the best personnel and maintain the morale of civil servants. It follows that the selection procedure for entry into the civil service and for promotions within it must not only be impartial but must also appear so. Procedure must be based on the criteria of merit and public interest—not on political influence and patronage or nepotism. Similar considerations should apply to the procedure for handling disciplinary matters.

In virtually all countries merit is the stipulated criterion for selection and promotion. Indeed, many countries have a Civil or Public Service Commission that regulates the appointment, promotion and discipline of staff in the civil or public service. The Ethiopian Civil Service Proclamation (Law), for example, prohibits discrimination among job seekers on the basis of ethnicity, sex, religion or political outlook or affiliation. Vacancies are to be filled purely on the basis of qualification and performance on selection examinations. In addition, the law requires promotions to be based on outstanding performance and anticipation of aptitude for the new position and seniority. Although this is the rule for many countries, there is usually a wide gap between precepts and practice.

Except for a few countries, such as Ghana, Namibia and Botswana, the perception by and large is that the meritocracy in appointment and promotion is largely compromised. Political considerations and social links of ethnic, religious and kinship ties often influence recruitment into the public service. In countries like Mali, Niger and Zambia, for instance, the perception is that it is quite rare for a member of a political party other than the ruling party to be appointed to a senior position in

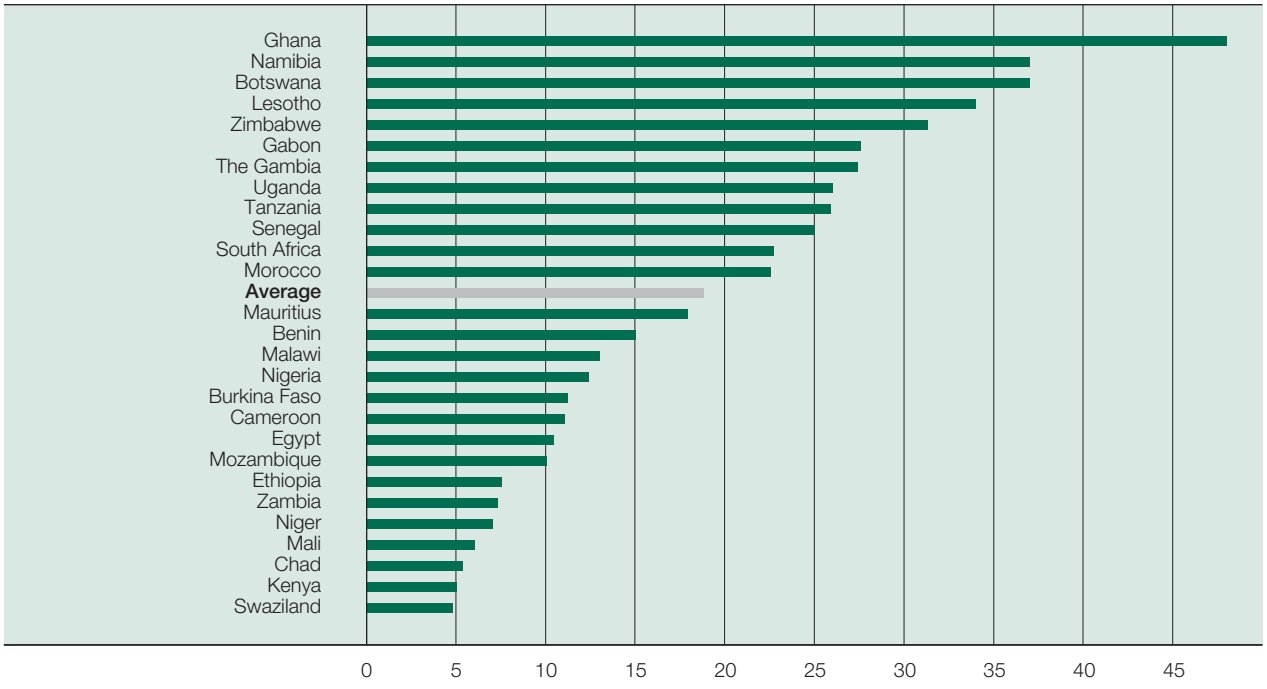
the public service. And in Uganda, Tanzania, Senegal, South Africa and Morocco, for instance, merit is considered a key factor in appointment in the civil service, but other factors such as the consideration for a representative, efficient and accountable public service also come into play.

Additionally, in virtually all countries the people are sceptical of how much merit-based principles govern appointment, promotions and career development in the civil service. In none of the countries did more than 50% of the experts surveyed say that merit-based principles were fully applicable (figure 5.1). The average across all the project countries was about 17%.

Popular legitimacy of the public sector

One basis of the legitimacy and credibility of the public sector is its balanced composition in terms of ethnic, regional and gender representation, although negotiating the delicate balance between merit and sectional representation can be a problem (as discussed in chapter 1). It is more palpable in plural and diverse societies such as Nigeria and South Africa. For many countries the issue of balanced composition of public sector workforce is one of convention rather than law. But in fed-

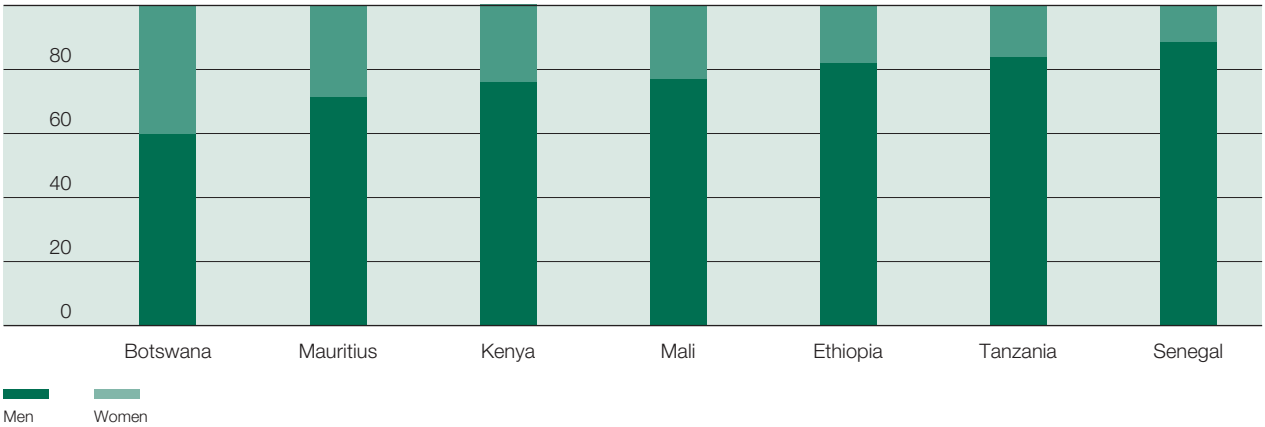
Figure 5.1 Expert opinion on appointments, promotions and career development of civil or public servants as strictly or largely governed by merit-based principles
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Figure 5.2 Gender representation in senior executive positions in the civil service in selected countries

Share of women in workforce, by country (%)



Source: ECA governance project desk research

eral countries such as Ethiopia and Nigeria sectional representation in the public service is a constitutional issue meant to promote unity and national integration in the country and alleviate fears of domination by one group. For less sociologically diverse countries such as Lesotho sectional representation is not as much of a politically sensitive issue and does not rank high in the constitution of the public sector in those countries. In Lesotho disabled people are represented in senior public service positions. Although it is not constitutionally mandated, it has become a convention.

The extent to which the senior public service reflects a cross-section of the society varies by country. In South Africa and Tanzania the composition of senior public service is perceived to fully or largely reflect a cross-section of society, but in Cameroon, Malawi and Mozambique it is not. On average across project countries, 30% of experts indicated that the composition fully or largely mirrored society, while 36% said it did not.

The trend is that women's representation in the public service decreases farther up the public service hierarchy

Gender representation in the state bureaucracy is an area where many African countries perform poorly. Women are underrepresented in the public service, especially in the senior cadre (figure 5.2). The trend is that women's representation in the public service decreases farther up the public service hierarchy. For instance, in Malawi the share of women at various levels of the civil service are 13.1% as principal secretaries, 11.5% as senior deputy secretaries, 9.6% as deputy heads and 11.1% as senior deputy heads of departments. But 58.8% of the lowest officer grade are women. In Mali women make up 51% of the population, but they make up 23% of senior executives and only 5% of senior executives in the police force. In Ghana women account for only a third of the civil service, but they account for 45% of the workforce in the Ministry of Justice. Women's representation in the security forces is also very low in Ghana: only 9%. In Ethiopia women's under-representation is not only in terms of number, but also in the nature of professions that require higher

Box 5.1 Voice and power for women in Botswana

Botswana is one of the rare cases in which women's involvement in the policy process, especially in the public sector, is relatively high. There are 1,236 women in top decision-making positions in the central government, which constitutes 40% of the workforce. These numbers are due largely to the deliberate gender-sensitive policies of the government, which amended seven acts in 1995–2000 to eliminate different forms of discrimination against women.

Source: Botswana country report

education and skills qualification. In 1999 only about 18% of legislators, senior officials and managers and 17% of the professional cadre were women.

Countries like Botswana, Mauritius, Namibia and South Africa have made considerable progress integrating women into the mainstream of the decision-making process in the public sector (box 5.1). Ethiopia, Senegal and Tanzania still lag considerably behind in women's representation in the public service: less than 20% of their public service workforces are women.

The low level of women's representation in the public service and the formal economy as a whole in many countries is related partly to the low priority often accorded to female education and the cultural bias against women working in the formal sector of the economy.

Remuneration, training and facilities in the public sector

The three interrelated factors of remuneration—wages, salaries and fringe benefits—as well as training and facilities are key determinants of the motivation, competence and institutional capacity of an organisation. Remuneration has direct and indirect implications for state administrative and technical capacities. Direct influence relates to the ability to attract and retain trained and experienced personnel. Indirect effects of a relatively well-paid public sector relate to good normative practices and ethics that prevent bureaucratic malfeasance such as corruption, "moonlighting" and "ghosting", which are ways of stealing from government and lowering standards of performance and the integrity of the service.

In Ethiopia nearly 71% of the employees in the civil service earn less than 500 birr (US$ 61) a month, a low amount relative to the cost of living

From the 1960s through the 1980s remuneration in the public service was relatively good, although it was lower than in the private sector. But recent developments, especially the economic downturn and the implementation of the structural adjustment programmes, have had devastating effects on remuneration in the public service. The waning financial profile of the state decreased its capacity to pay reasonable living wages, inflation soared under currency devaluation pressures, and wage freezes were imposed to control government expenditure. The result was that real wages did not increase, and public sector wages, especially for the civil service, lagged disproportionately behind. Massive numbers of competent and highly skilled workers moved from the public sector to the private sector and to foreign countries. There were also numerous layoffs of workers in the public service in many African countries.

In Ethiopia nearly 71% of the employees in the civil service earn less than 500 birr (US$ 61) a month, a low amount relative to the cost of living. The ratio of civil service pay to private sector pay in Ethiopia is 1:2.13 for managerial and administrative cadres, 1:2.07 for professional and scientific cadres, 1:1.34 for technical cadres and 1:1.65 for clerical cadres. About half the workers with doctoral degrees left the service between 1995–99 due to unfavourable working conditions, including remuneration (Ayenew and Chanie 2000). As in many countries, in Malawi low wages have made it increasingly difficult for the civil service to attract graduates because most of them are lured to the private sector by better salaries. Some workers resort to multiple modes of livelihood by doing private work to supplement their incomes. Others use work time or departmental resources to conduct private business. This erodes commitment and undermines the effectiveness and capacity of government departments and ministries. In Kenya the emergence of structural adjustment programmes led to a rationalisation of the civil service in which a combination of policies was put in place, including retrenchment, voluntary retirements, elimination of ghost workers and an embargo on new recruitment. In the first retirement exercise the professional and technical staff members sought to retire because they had little or no problem finding alternative employment, which further eroded the capacity of the public sector to efficiently deliver services.

Many African countries have not been able to provide their civil service with modern facilities, especially information technology and equipment, to function adequately—partly because of resource constraints and lack of strategic planning

Training is one of the major means for upgrading the capacity, quality and efficiency of the civil service. Many African countries have training programmes for their civil service, especially the management cadres, and have established staff training centres, such as the Administrative Staff College of Nigeria and the Centre for Management Development (in Nigeria) and the Ghana Institute of Management and Public Administration. In other countries programmes are decentralised to departments (with some budget earmarked for it), which find efficient ways to offer training, including outsourcing to private agencies. Both approaches are currently under stress in many countries. A financial squeeze has decreased resources allocation for training, which has constrained the capacity of government centres to deliver efficient and modern services. Without adequate and continuous training the capacity of workers even for the most qualified is likely to wane, and institutional efficiency will decline.

With regard to facilities, many African countries have not been able to provide their civil service with modern facilities, especially information technology and equipment, to function adequately—partly because of resource constraints and lack of strategic planning. In those countries information is largely manually recorded and released, a time-consuming process that reduces efficiency and impairs service delivery. Indeed, basic functional materials such as stationery are in short supply in the public service of some African countries. However, countries such as Botswana, Mauritius and South Africa have made significant strides to modernise the facilities and infrastructure of their public sector (box 5.2).

Capacity of local governments

Different forms of decentralisation programmes accompanied political reforms and democratisation in many African countries. African governments have made a bold start on decentralisation initiatives to revitalise the devolution thrust for local government democratisation and empowerment (as in South Africa, Uganda and to some

Box 5.2 Commitment to training and capacity building in Mauritius' civil service

With a civil service that is well staffed with qualified personnel at the middle and upper management levels, the government of Mauritius has accelerated the provision of and invested seriously in training and has actively promoted information technology throughout the service. Also, steps are being taken to eliminate bureaucratic red tape and administrative bottlenecks in the public service. The goal is to reduce time and cost in the provision of customer services by the public sector and to promote efficiency.

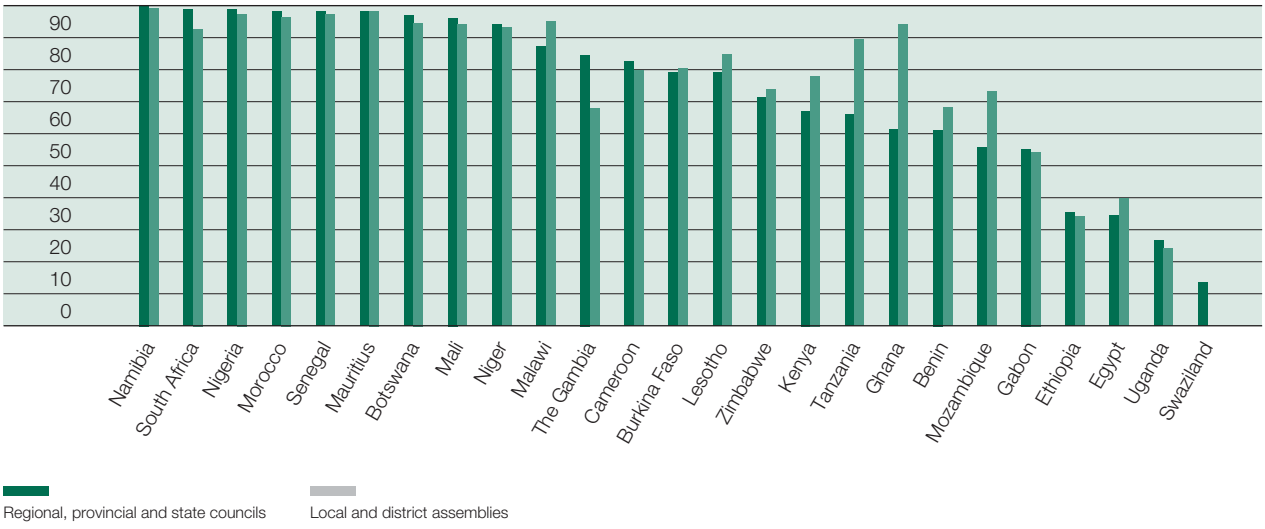
Source: Mauritius country report

extent Nigeria) or some have tried to institutionalise a full-fledged local government system side by side with field representatives of functional and technical departments of the central government under the umbrella of a relatively decentralised system at the state and regional levels. Across the continent there is a realisation that local governments constitute a powerful force in grassroots political participation and delivery of social services to local communities and poor households.

Across the project countries most local councils are competitively elected and constituted. Indeed, the local assemblies in some countries have more democratic character than the regional, provincial or state councils. In Malawi, Lesotho, Kenya, Tanzania, Ghana, Benin and Mozambique, a majority of the experts surveyed said that local councils are constituted on a competitive basis more often than regional, provincial or state councils (figure 5.3). Hence, most local authorities have assumed a democratic character.

Figure 5.3 Expert opinion on regional, provincial and state councils and local and district assemblies as constituted on a competitive basis

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

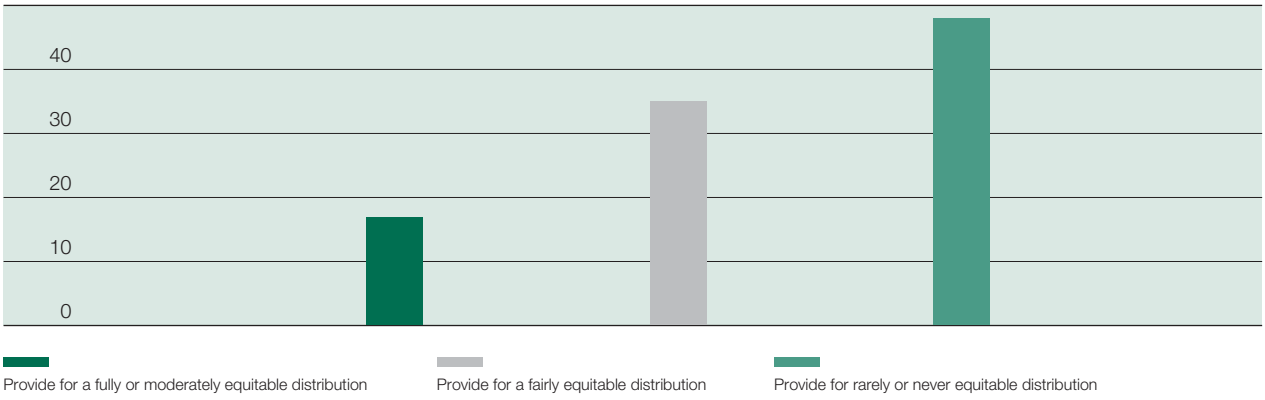
An average of nearly 50% of the experts surveyed across the project countries said that local governments have inadequate mechanisms for ensuring equity in the delivery of social services

The performance of local governments in delivering efficient services depends on a host of factors, including their human and material resources, the extent to which people participate on the ground in the decision-making process and make inputs into policies, their responsiveness to community needs and demands and their level of accountability. Some countries have a multitier local government system (for example, Ethiopia and Mali) and others have a single tier local government system (for example, Nigeria). But nearly all of them are poor performers. Local governments in many countries have serious capacity deficits, with poorly educated elected representatives, an inadequate workforce and a weak financial base with a high level of dependence on the central government for funds. In Kenya and Tanzania the public perception is that there is little consultation or local community input into the decision-making process or local government affairs. Local governments are more accountable to the central government than to the electorate. An average of nearly 50% of the experts surveyed across the project countries said that local governments have inadequate mechanisms for ensuring equity in the delivery of social services (figure 5.4). Similarly, about half of experts agreed that service delivery institutions did not have adequate mechanisms or any at all for community participation. This partly explains the poor quality of services delivered by local governments to the communities they serve.

While many countries have revived their local government system, there is much to be desired in terms of the system's autonomy. Many local governments have a poor financial base because they rely on grossly inadequate grants from the central government. The share of the annual budget allocated to local governments is often less than 10% in many African countries. In 2001 it was 2% in Malawi and 0.5% in Mali. In Botswana, where an average of 8.72% of the national budget was allocated to local government in 1999–2002, the local government is heavily dependent on the advice, guidance, finance and workforce of the centre. Given the fact that local governments are so unresponsive to communities, the public perception is that they are very corrupt. In Kenya and Nigeria for instance, many local governments

Figure 5.4 Expert opinion on local government procedures for resource allocation for service delivery

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

still lack the capacity for financial management and are insolvent, unable to meet basic responsibilities.

Overall, on average only about 12% of experts across project countries believed that government fully or moderately responds to the basic needs of the communities in an efficient manner, while nearly half reported it rarely or ever does.

Given the fact that local governments are so unresponsive to communities, the public perception is that they are very corrupt

With a poor resource base, few inputs from the community and excessive control from central or regional governments, local governments often have little capacity to manage decentralised functions. Thus in many African countries the scorecard for local governments in managing local affairs or ensuring delivery of local services is poor (as discussed in chapter 1). In 12 of the 26 countries surveyed 50% or more of the experts surveyed said that local governments had poor or no capacity, and in Mali, Ethiopia and Niger more than 70% said the same thing. By contrast most experts surveyed in Botswana, Ghana, Mauritius and Namibia said that local governments have at least limited capacity to manage decentralised functions.

Despite the discouraging situation of local governments in many African countries, some countries are seeking new ways to promote innovation and revitalise the local government system. In Mauritius local authorities are legally obligated to maintain a reasonable standard of efficiency and progress in order to receive a budgetary transfer from the central government. In addition, the accounts of local authorities are scrutinised by the director of audit, officers in the Ministry of Local Government and members of the public in the local council.

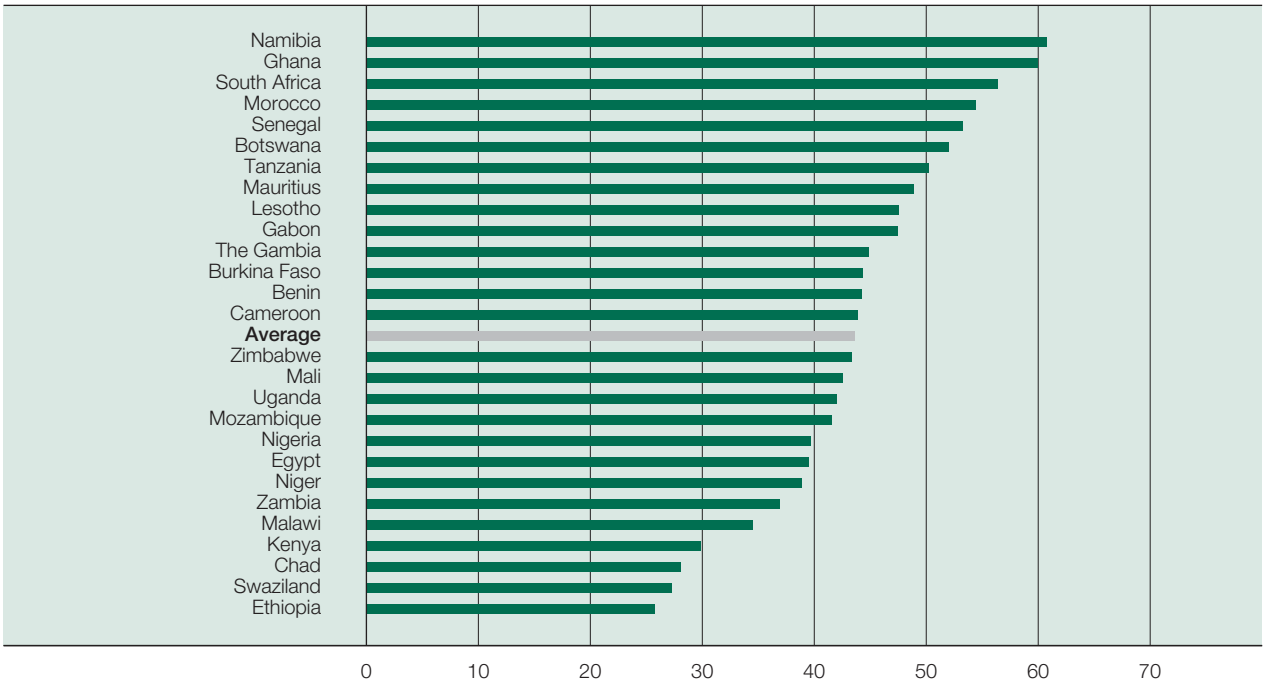
The capacity and autonomy of local governments have to be given due consideration in the governance agenda of African countries because it is the tier of government closest to the rural areas and local communities where more than 80% of the population lives. Local empowerment and poverty reduction cannot succeed under a weak, corrupt and dependent local government system.

Transparency and accountability

The elements of transparency and accountability are core values of good governance. Transparency is about openness in the conduct of public affairs—the right of citizens to access public documents and information, raise queries and institute administrative and legal actions in cases of official misconduct by public officials. Accountability, which is the flip side of transparency, is the obligation to answer for the fulfillment of assigned and accepted duties and responsibilities within the framework of the authority and resources provided.

In many countries either the public service code or the constitution makes specific provision for transparency and accountability (as discussed in chapter 4). But in many African countries there is little transparency in government business. Official information is often either not available or not easily accessible to the public. And when information is provided it is often in a technical language incomprehensible to decision makers and the public. Under this system the government misses the advantages of active exchanges on its policies among actors. Government business is

Figure 5.5 Governance index on civil service transparency and accountability
Index (0 = worst, 100 = best)



Source: ECA governance survey of experts

often shrouded in official secrecy, with the Official Secrecy Act that remains in many countries conveniently shielding the actions of the executive from public scrutiny. The governance index on civil service transparency and accountability from the project countries indicates an average across the project countries of less than 50 on a scale of 1 to 100 (figure 5.5.). This clearly suggests that most people still do not regard the public service as transparent or accountable, especially in Ethiopia, Swaziland, Chad and Kenya.

The underdeveloped nature of some media and the heavy-handed government actions against journalists and media establishments in many countries further erode transparency in government

The underdeveloped nature of some media and the heavy-handed government actions against journalists and media establishments in many countries further erode transparency in government activities. Mauritius has tried to adapt information technology for easy access to government information. Information about government activities is now available online, including cabinet decisions, parliamentary bills, actions and proceedings, questions and answers, sectoral reports and reports from various ministries and state-owned enterprises. Furthermore, the government seeks to promote a culture of consultation with various social actors and stakeholders in the budget process, including employees and employers, trade unions and the public at large, before the budget is prepared. The Central Tenders Board also maintains a high level of transparency in the award of government contracts.

In South Africa the constitution requires the government to act accountably and transparently. This has been further elaborated on by key constitutionally mandated

legislation that have revolutionised public administration by raising the threshold of accountability and transparency. The Administrative Justice Act requires public officials to follow procedures that are fair and impartial and to explain their decisions. The Access to Information Act provides the public easy access to information from government departments and agencies under specified rules and procedures.

Big Man or democratic leadership?

As discussed in chapter 1, the use of wide ranging discretionary powers by the executive, especially the president or head of state, was a central feature of authoritarian rule in Africa. Despotic leaders appropriated extensive political power, dominated the bureaucracy and unilaterally determined state policies. The public service operated more like a personal political machine for the leader because it was often controlled by the leader's family, aides and friends. In this context the leaders were accountable only to themselves (Good 1997), which was a major factor in the poor policy design and choices and economic crisis that enveloped many African countries. The recent wave of democratisation that has been sweeping the continent opened up not only the political and market spaces but also the policy arena, and it led to the reform of the government bureaucracy in many countries.

More democratic dialogue and consultation and less use of discretionary power by the political authority are needed in policymaking in many African countries

Across the continent civil society now has more input into policymaking, thus improving the quality of public policies and services rendered by the state to the people. More citizens and citizen associations are gradually being included in government decision-making processes. Tanzania, Mozambique and Ethiopia rank highest among countries where the households surveyed said that their voices are considered in community decisions by the government. Gabon, Chad and Morocco rank lowest. On average across project countries, nearly 48% of households felt that the government rarely or never takes citizen suggestions into account.

Furthermore, in Ghana the Criminal Libel Law, which had constrained the media, was repealed in 2001. In Benin the government devised means to incorporate civil society organisations into policymaking, given their closeness to the people and their knowledge of the subject areas. Although there was an elaborate institutional framework in Kenya, the lack of an open systematic procedure for public consultation on government policy and legislation meant the president as the chief executive could dominate procedure and minimise the role of other domestic actors (Hyden 1992; Barkan 1992). This practice is now being reversed with the victory of the opposition parties led by President Kibaki.

More democratic dialogue and consultation and less use of discretionary power by the political authority are needed in policymaking in many African countries. Discretionary power promotes arbitrariness, bad judgement in policymaking and the isolation of the people from the policy process.

Corruption

The integrity of the executive is related directly to the level of corruption and abuse of power that it exhibits. A corrupt executive or government is likely to have little

legitimacy and credibility and a tenuous following. Corruption is a global phenomenon that affects virtually all countries, and it has reached endemic proportions in Africa, a continent that can ill-afford it given its debilitating level of poverty. Transparency International's (2004) corruption perceptions scores for all African countries except for Botswana were 5 or below on a 10-point scale. Botswana, which ranked 31 with a score of 6.0, was the highest scorer in Africa. Angola, the Democratic Republic of Congo, Côte d'Ivoire, Chad and Nigeria were among the 14 countries where corruption is perceived to be most prevalent—their scores were all 2.0 or below.

There are fears that the nascent growth in some countries will be reversed and the prospects of sustained economic development in others stalled by extensive and institutionalised corruption in Africa (Rasheed 1995; Olowu 1999). The increasing level of corruption in Africa is due to three main factors. First is the level of institutional weakness in many African countries, which makes it possible for political leaders and public servants to embezzle national resources and abuse their power without being checked. Second is the deteriorating economic fortune and living standards of public servants in many countries, which makes corruption a viable means of social livelihood. The third reason has to do with the role of external actors. Foreign companies and private interests often capitalise on weak institutional mechanisms and level of poverty in Africa to bribe state officials in order to gain undue advantage or secure political privileges in state policies.

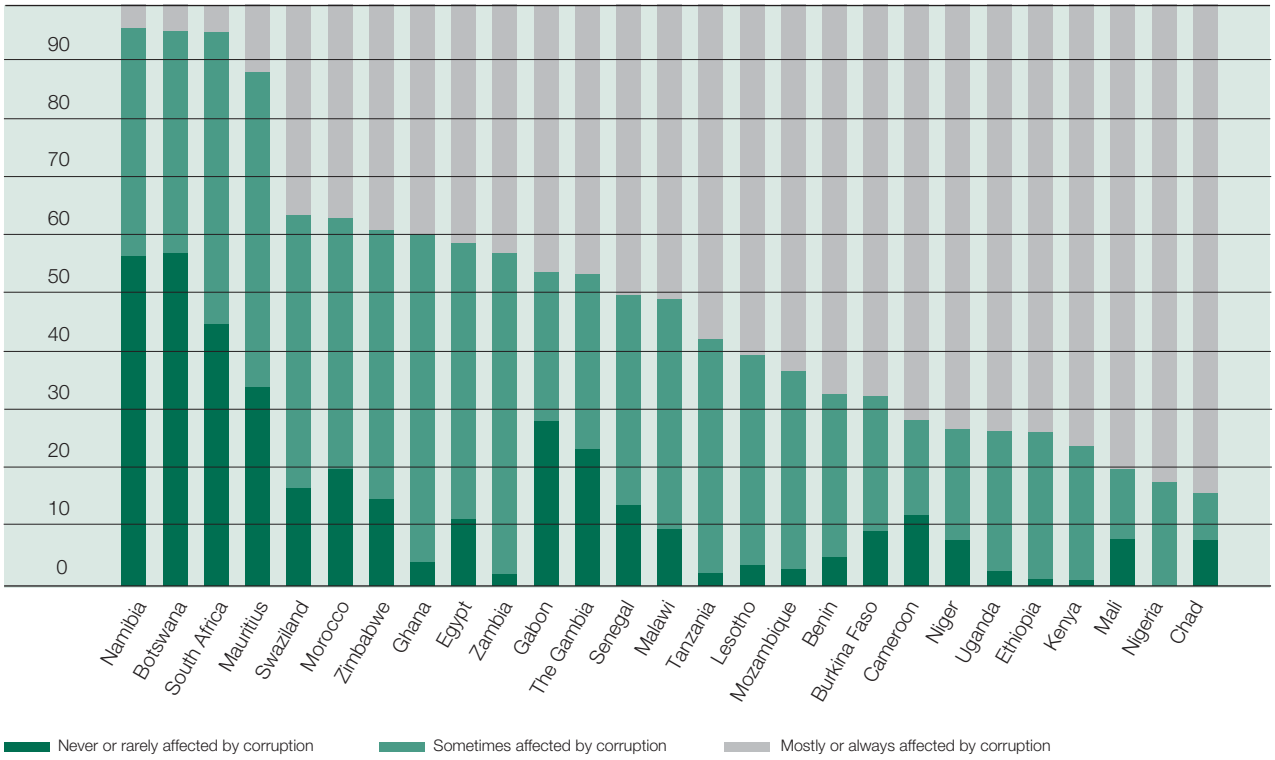
For many African countries, corruption ranked among the top three problems behind poverty and unemployment

Corruption ranks very high in the list of problems for many African countries. A recent study in Ethiopia sponsored by the World Bank found that corruption was the most important problem that households face after poverty (IER 2002). The situation is similar for many African countries, with corruption ranked among the top three problems behind poverty and unemployment. In Cameroon, Morocco, Nigeria and Tanzania more than 25% of the households surveyed said that corruption was a serious problem.

One manifestation of corruption in the public service is bribery. The general perception among Kenyans is that the civil service is not only corrupt but also inefficient. Many civil servants and ministers have been implicated in corrupt deals, such as favouritism in awarding scholarships, positions and contracts, which erodes public confidence in state institutions. In Malawi the public rating of the integrity of the civil service and the executive is very low, with a general perception that corruption runs deep in the public sector. In Nigeria corruption is considered a national malaise that causes ordinary citizens to have little trust in the state.

In Ghana corruption is widely perceived to be rife in the public bureaucracy. A 1999 corruption and governance survey conducted there by the Centre for Democratic Development found that 62–87% of households had paid bribes to government agencies, with Motor, Transport and Traffic Unit, the Customs, Excise and Preventive Service, the regular police and immigration service topping the list of bribe-takers. In the survey 44% of the private businesses said that they have made unofficial payments to public officials, some frequently or always (CDD 1999).

Figure 5.6 Expert opinion on corruption in the tax collection system
Share of households surveyed, by country (%)



Source: ECA governance survey of experts

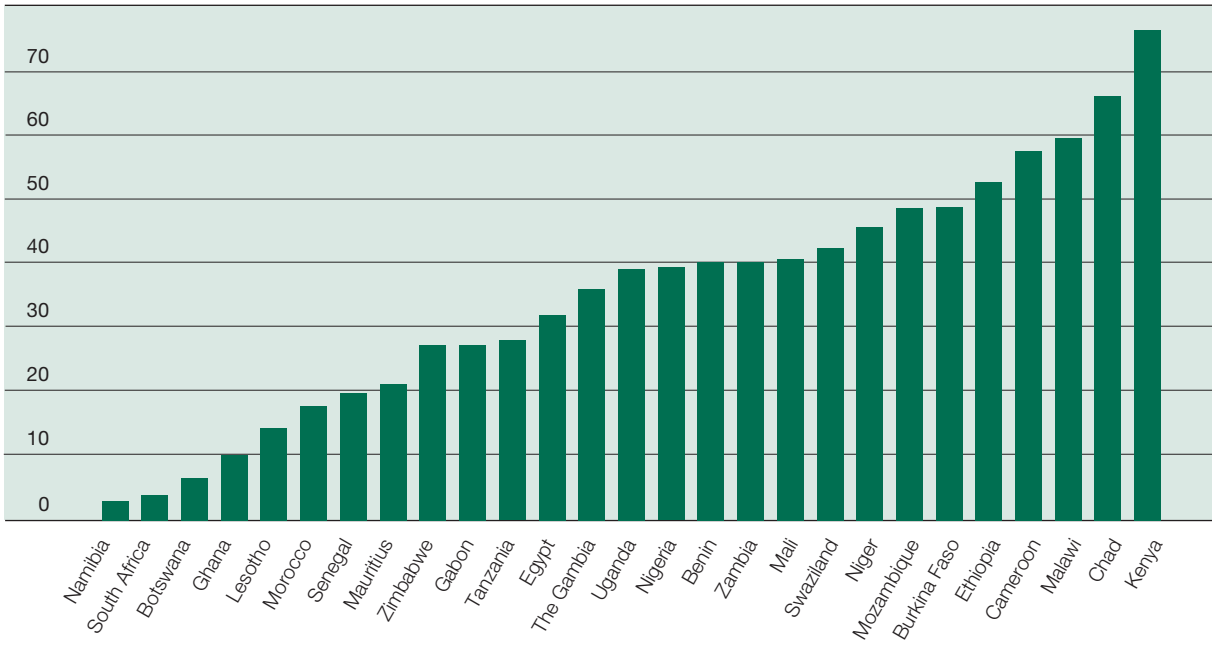
In many African countries, corruption has become a systematic plague that pervades the entire public sector. Areas where corruption manifests in public service include human resources management in terms of recruitment and promotion, public services provision and management of public resources, especially for tax receipts and expenditure management.

Although the level of corruption is still high, many African countries are making significant efforts to tackle the problem

There also seems to be a regional dimension to the perception of the level of corruption in Africa. The integrity of government and level of corruption are rated more poorly in West and East Africa than Southern Africa. In Benin, Burkina Faso, Cameroon, Niger, Uganda, Ethiopia, Kenya, Mali, Nigeria and Chad there is a perception of a high level of corruption in the tax collection system, while in Namibia, Botswana, South Africa and Mauritius the perception is of little corruption. In fact, in Namibia, Botswana and South Africa, for example, more than 95% of the experts surveyed said that the tax collection system is largely free from corruption (figure 5.6).

Futhermore, the poor regulation of the privatisation process in many African countries has triggered a ceaseless web of corruption in the executive, the bureaucrats and the local and foreign business class. A wave of clientelism, cronyism and

Figure 5.7 Expert opinion on whether the executive is largely or completely corrupt
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

patronage characterises the process in many countries, along with the deliberate undervaluation of government property, sale of government assets to political friends and cronies, provision of privileged information for would-be bidders of government assets and bribes to government officials. Related to the perception of the executive as fairly or completely corrupt, in 12 of 27 countries 40% or more of the experts gave that rating (figure 5.7). The issue is not whether privatisation is good or whether it should be carried out, but that the process must be methodical and well organised under a strong institutional framework. As such, there is an external obligation to curbing corruption in Africa (box 5.3).

Box 5.3 Developed countries must tackle corruption in poorer countries

"Western governments must also show that they are serious about tackling their own companies that bribe abroad. The OECD Anti-Bribery Convention, which outlaws bribes to foreign public officials, came into force in 1999, but we are still awaiting prosecutions in the court of the 35 signatory countries. The governments of these countries have an obligation to developing countries to investigate and prosecute the companies within their jurisdictions that are bribing. Their bribes and incentives to corrupt public officials and politicians are undermining the prospects of sustainable development in poorer countries".

—Peter Eigen, Chairman of Transparency International

Source: Eigen 2003

Although the level of corruption is still high, many African countries are making significant efforts to tackle the problem. President Mwanawasa of Zambia, which ranked 106 of 146 countries surveyed by Transparency International in 2004, has shown that there is no sacred cow on the issue of corruption and significantly improved the public profile of the government. The efforts of the Kufuor administration in Ghana and the Museveni administration in Uganda are changing public perception about the integrity of the government. In Tanzania the government revitalised its anticorruption institution, the Prevention of Corruption Bureau, improving its workforce by hiring well-trained investigators and providing them with better facilities. In 2002, 1,461 complaints were filed with the bureau—1,311 of them involved public officials, 88 involved private individuals and 62 involved political parties. At least 20 highly placed public officials retired, and 1 minister was tried on allegations of corruption.

Several public regulatory and watchdog institutions and mechanisms exist to curb corruption and abuse of power and to promote accountability by the executive and the bureaucracy

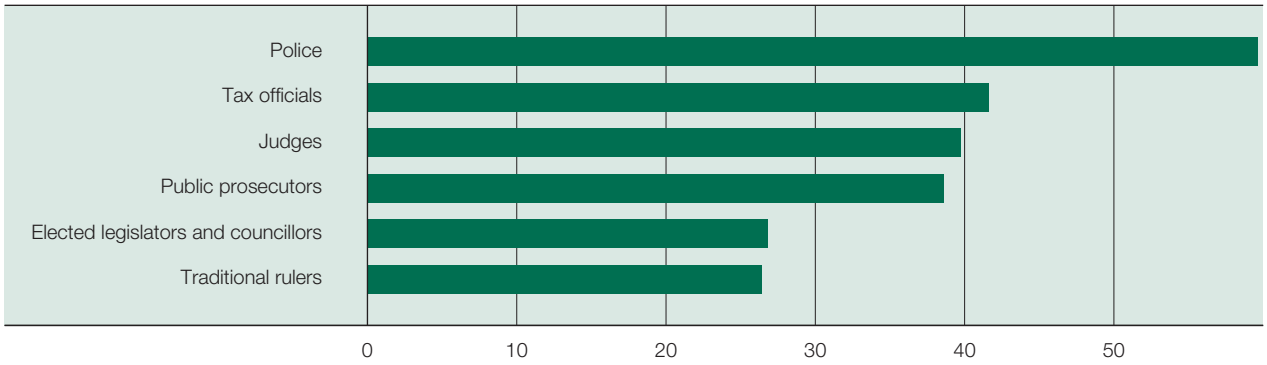
In Mali and Benin, in addition to government efforts to fight corruption, civil society has also been active in the campaign against corruption. In Mali four civil society groups have been established primarily for this purpose: the National Observatory for the Fight Against Corruption, the Centre of Studies, Reflection, Sensitization on Corruption and Poverty in Mali, the Alliance for Transparency in Mali (the Malian branch of Transparency International) and the Malian Network of Journalists for the Fight Against Corruption and Poverty. In Benin the Public Moralisation Unit of the Office of the President has specifically encouraged civil society to be involved in the fight against corruption. This led to the establishment of the *Front des Organisations Nationales Anti-Corruption* (FONAC), an association to coordinate, inspire and support anticorruption initiatives in partnership with the country's public institutions. The association is very active in condemning scandals and in pressuring the authorities to eschew corruption. It also provides information and education on corruption in the country.

Integrity of public institutions

Several public regulatory and watchdog institutions and mechanisms exist to curb corruption and abuse of power and to promote accountability by the executive and the bureaucracy. These include the legislatures, judiciaries, police forces, audit departments, ombudsmen and civil society. Corruption flourishes because most of these institutions are weak, corrupt or not autonomous. Legislative committees that ordinarily should oversee government ministries and state-owned enterprises barely have the professional competence to do so—or they are also corrupt. For example, the expert surveys found that in Chad, Egypt and Nigeria, the legislature is considered to be largely corrupt, while in Burkina Faso, Cameroon and Zambia, it is considered to be only somewhat corrupt. A corrupt legislature cannot credibly perform its oversight functions.

The audit departments in many African countries are also poorly staffed, lack resources or autonomy or are partners in corruption. Even when auditor generals find corruption in the public service, as happened in Nigeria under the Obasanjo civilian administration, they are ignored or even reprimanded for casting aspersions on the integrity of the regime. In Malawi, for instance, corruption persists because the internal controls within ministries, especially audit systems, are very ineffective.

Figure 5.8 Household opinion of corruption among public officials
Share of households surveyed, average across all project countries (%)



Note: Values do not sum to 100% because respondents could select more than one response

Source: ECA governance survey of households

Many of the public institutions are perceived to be very corrupt. For example, the police force in many countries is considered to be the most corrupt by the households surveyed, followed by tax officials and the judiciary (figure 5.8). In Zimbabwe, however, traditional rulers were considered to be the most corrupt group of public officials.

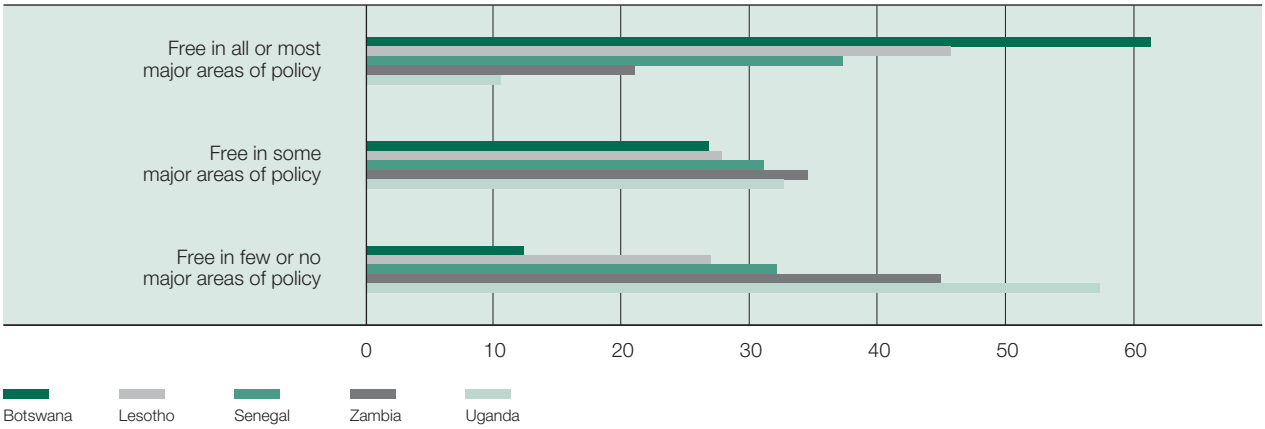
Policy-making process and coherence

External or donor input into policymaking in Africa cannot be discarded, but when it overrides local initiative and control, it undermines capacity on the ground and impairs domestic support and ownership

There are numerous actors in the policy terrain of the public sector, including the legislature, the executive and the judiciary as well as the bureaucracy, media, civil society organisations, the private sector and donor agencies and countries. Greater participation in the policy process by domestic actors enriches public policy and increases the sense of national ownership of policy outcomes, but so many actors make the policy arena complex, with conflicting interests and demands to be expressed and aggregated to serve the public interest. Although the legislature is responsible for making laws and broad guidelines for public policy, responsibility for policy design and implementation lies with the executive and the bureaucracy.

Within the executive framework, countries differ in terms of the main actor in policy design. In some countries the bureaucracy is the linchpin of the policy process because it is the repository of information and governmental power, and the executive only provides leadership and political authority to it, especially its senior cadre. This is the case in Botswana, where senior bureaucrats drive the national policy process from development to implementation and control the annual budget. This creates an air of professionalism and prevents political interference in the policy process. The executive does not play a less significant role—it still approves policies and markets them to the populace. But in some countries, such as Kenya, the executive wields tremendous power in the policy process. The strength and credibility of the public service in policymaking has been eroded by the executive's policy statements and actions that override the official policy.

Figure 5.9 Expert opinion on the extent to which the government is free from subordination from external agencies in major areas of policy in selected countries
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Africa's development partners are playing increasingly significant roles in the policy process of many African countries. Aid dependence, debt overhang, crunching poverty and the reality of economic decline have compelled many countries to acquiesce to both financial support and policy choices from donor agencies. In many countries the donor community finances economic reforms; because the donors pay, they also determine reform packaging and monitor implementation. The World Bank, International Monetary Fund and prominent members of the G-8 have thus become stakeholders and actors in policy design and implementation in Africa, especially with regard to adopting and implementing neoliberal policies of structural reforms.

The level of policy coherence is poor in many African countries, but in Botswana the development planning process involves extensive local and national consultation through a chain of planning stages from the village through the district to the centre

Donor pressure on the executive and on policy preferences is quite apparent in many African countries, although the degree to which countries succumb to it varies. In some countries public perception is that the country's heavy reliance on donor support for development financing somewhat subordinates the executive in policy formulation, while in others counterpressure from domestic forces sometimes mitigates influence on policy choices. In Botswana and Lesotho most of the experts surveyed said that their governments are largely or fairly free from external subordination in making major policies (figure 5.9). In Senegal the picture is more mixed, and in Zambia and Uganda most experts surveyed said that their governments are not very free in making domestic policies.

External or donor input into policymaking in Africa cannot be discarded, but when it overrides local initiative and control, it undermines capacity on the ground and impairs domestic support and ownership, which are central to effective policy articulation, implementation and outcome.

Levels of coordination and coherence

Coherence in policymaking is crucial for determining how well public policies are articulated and how government organs and departments interact in policy

coordination and implementation. Policy coordination and coherence are vital to the articulation and successful implementation of good policies. They require constant interaction and synergy among the institutions and organs in the policy process.

There are three types of policy coherence in the public sector. First is intra-organisational coherence, which requires different levels of an institution to interact and cooperate in policy formulation and implementation so that the hierarchy and various departments connect very well in the policy arena. Second is horizontal coherence, which requires interdepartmental or interministerial cooperation in the policy process. In many cases government departments do not share information and cooperate, which often leads to duplication of efforts and poor policy design. Third is intergovernmental coherence, which requires central, regional or state and local governments to cooperate in creating a national framework to effectively harmonise policies despite each level of government's autonomy. This is essential to rationalise resources, promote effective planning and provide efficient service delivery.

The popular perception in Africa is that improved social services should be one of the major dividends of democracy and good governance

The level of policy coherence is poor in many African countries, but some countries, such as Botswana, Mauritius and South Africa, have increased coordination. For example, in Botswana the development planning process involves extensive local and national consultation through a chain of planning stages from the village through the district to the centre. Central direction and coordination still dominates, though, with senior bureaucrats having a prominent role in policymaking. No investment project—either donor- or government-funded—is approved unless the government can finance recurrent costs. Thus planning is closely linked to the annual process of recurrent and development budgeting so that qualitative targets are reviewed and updated each year in addition to midterm reviews of national plans, thereby offering workable links between medium-term planning and policymaking. The links among policymaking at different levels of government in Botswana can be described as a form of decentralisation within centralism, or a mixture of deconcentration and devolution of planning while allowing the centre to make final decisions on allocation.

In many African countries the introduction of the Medium-Term Expenditure Framework, which owes much to external incentive, has improved the level of policy coordination among government departments at least in budgeting. But its practice remains poor and partially implemented in many countries.

Service delivery

Efficient, affordable and effective delivery of public services is a major raison d'être of government and a core responsibility of the executive. The popular perception in Africa is that improved social services should be one of the major dividends of democracy and good governance. Quality social services and good infrastructure are directly correlated with poverty alleviation because they reduce vulnerability and empower people. A democracy that does not produce tangible public goods in the form of accessible and efficient social services in the medium to long term is likely to elicit frustration and resentment from the people—and ultimately to disillusionment with the democratic process.

Addressing poverty with social services

Most African countries have absolute and relative poverty and a high degree of economic inequality. Over the last two decades many of them have shifted the emphasis of their economic development policies from growth to poverty reduction and economic inequality, with the encouragement and support of the international community. As a result, several succeeded in reducing poverty in their countries during the 1990s.

A recent study (Christiaensen, Demery and Paternostro 2002) on poverty in 14 African countries in the 1990s concluded that the level of poverty fell in Ethiopia, Ghana, Kenya, Mali, Niger, Nigeria, Senegal, Tanzania, Uganda and Zambia, while increasing in Burkina Faso and Zimbabwe. Despite the progress in poverty reduction, poverty still remains high: more than half the countries included in the study have poverty rates of 50% or more.

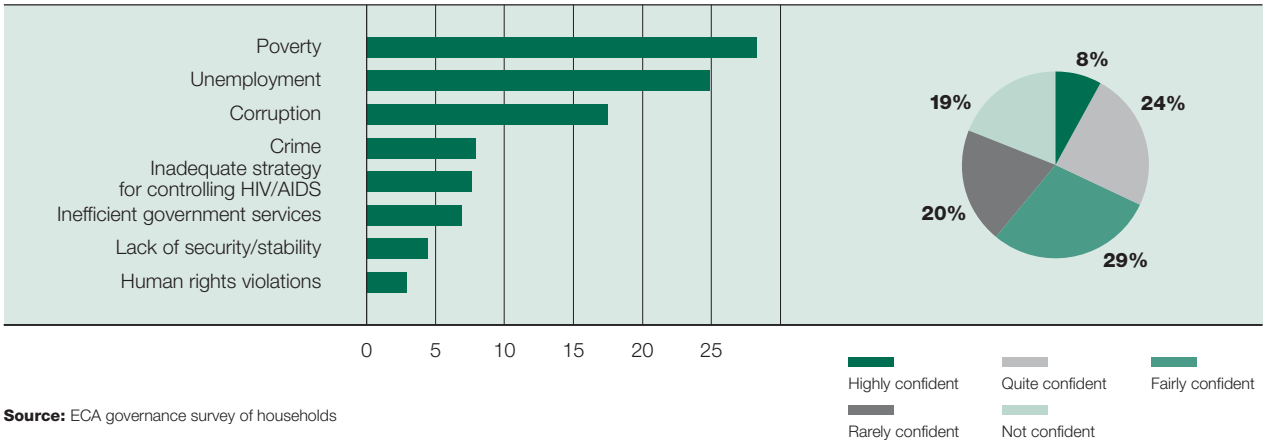
It is not surprising that poverty was ranked as one of the top national problems in the household surveys conducted in 18 countries, with 28% of households saying it is the most serious problem

It is therefore not surprising that poverty was ranked as one of the top national problems in the household surveys conducted in 18 countries, with 28% of households saying it is the most serious problem (figure 5.10). Some 25% said unemployment, 18% said corruption, 8% each said HIV/AIDS and crime, 7% said inefficient government services, 4% said insecurity and instability and 3% said human rights violations. Combining the responses for poverty and unemployment (because they tend to go hand-in-hand) makes poverty far more important than all the other issues combined. The countries with above-average scores for the seriousness of poverty are The Gambia, Cameroon, Benin, Mali, Zimbabwe, Tanzania, Kenya, Mozambique and Chad. Four countries with below-average scores on this measure are Mauritius, South Africa, Namibia and Uganda.

The Millennium Development Goals (MDGs) reflect a growing consensus in the international community that poverty is a global problem that must be tackled collectively by both poor and rich nations. The MDGs give urgent priority to such basic social services as education, health, water supply, sanitation and housing in

Figure 5.10 Household opinion on the most serious national problems and confidence that the government will deal with them

Share of households surveyed, average across all project countries (%)



Source: ECA governance survey of households

developing countries. These services must reach the poor to reach the goal of reducing poverty and hunger by half by 2015. In Africa the New Partnership for Africa's Development (NEPAD) sets as a major objective the eradication of poverty on the continent, with the provision of basic social services as a core strategy. The agenda of the MDGs and NEPAD on poverty reduction in Africa is supported by the adoption of the donor-supported Poverty Reduction Strategy Papers (PRSPs). For the PRSP, basic social services constitute the premise of poverty reduction in Africa.

Most African countries are channelling a greater share of their GDP to education and health than to the military

Basic social services complement each other and are set in an organic linkage. For instance, education affects all types of human development, such as it promotes better hygiene and increases the use of health services. Safe water and adequate sanitation also affect health outcomes: by reducing infectious diseases, they improve children's nutritional status and increase their learning ability. But Africa lags considerably behind in the provision of these services. Sub-Saharan Africa and South Asia are home to the largest concentration of hungry people. Between 1980 and 1995 per capita food production in Africa declined by 8%. Although net primary enrolment in Sub-Saharan Africa increased by 3% in the 1990s, enrolment ratios are woefully low in Africa: 57% (UNDP 2003).

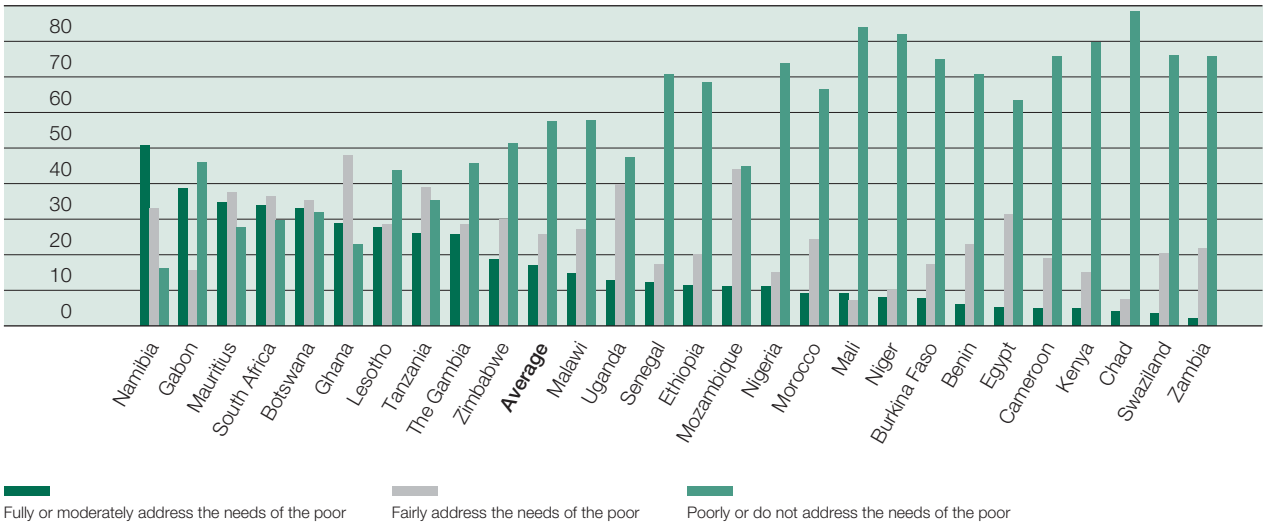
The share of the population in Sub-Saharan Africa with access to safe water is only 57%, and sanitation barely fairs better. Basic health provision in Africa is also in a despicable state. Sub-Saharan Africa accounts for half of the world's maternal deaths, with 1 of every 100 births resulting in the mother's death. Similarly, child mortality is unacceptably high, with 17% of children born not reaching age five. Based on this gloomy picture the United Nations Development Programme (2003) concluded that at current rates Africa is not likely to achieve the MDG for child mortality for almost 150 years.

Expenditures for the social sector are particularly important as a means of addressing poverty, and there has been some progress in this area. Most African countries are channelling a greater share of their GDP to education and health than to the military. Exceptions are Egypt, Ethiopia, Nigeria and Uganda. Data from the country studies also suggest that Gabon and Swaziland have also been allocating disproportionately high amounts to the military compared with the social sectors. In none of the 25 countries for which data are available does the government allocate more than 20% of public expenditures into health. Expenditures for health range from 4% in Morocco to 17% in Zimbabwe. In 14 countries the health sector received less than 10% of public expenditures (ADB and OECD 2003).

Approaches and institutional channels for service delivery

The provision of social services has always been considered a major public good in Africa. In the immediate post-colonial era most African countries made enormous investments in the delivery of social services of education, health, water supply, housing and sanitation. The government in most cases directly offered those services either for free or at a price that most segments of society could afford. A humanist impulse was the driving force of governance, with most governments focusing on the development of human capital and the social condition of their societies.

Figure 5.11 Expert opinion on whether government services address the needs of the poor
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

The attendant economic crisis that began in the 1970s and the rise of neoliberal economic ideology changed the philosophical conception of the provision of public services. Services that had been conceived of primarily as public goods to be provided by the government were redefined as largely private goods for which consumers must bear the cost. The government's role in the provision of most services was seen to be wasteful and inefficient as well as an avenue for corruption. The conclusion was that new formulas had to be devised to incorporate the private sector in the provision of those services. Full and partial commercialisation and privatisation programmes were begun in the social sector, with cost recovery a major consideration in the delivery of social services. The new approach demanded a restructuring of the sector to conform to market-based principles. Methods adopted include the deregulation of the sector by promoting private initiative, contract management, sale of government assets and investment in the sector (partial or full) and performance targets for commercialised public corporations and agencies.

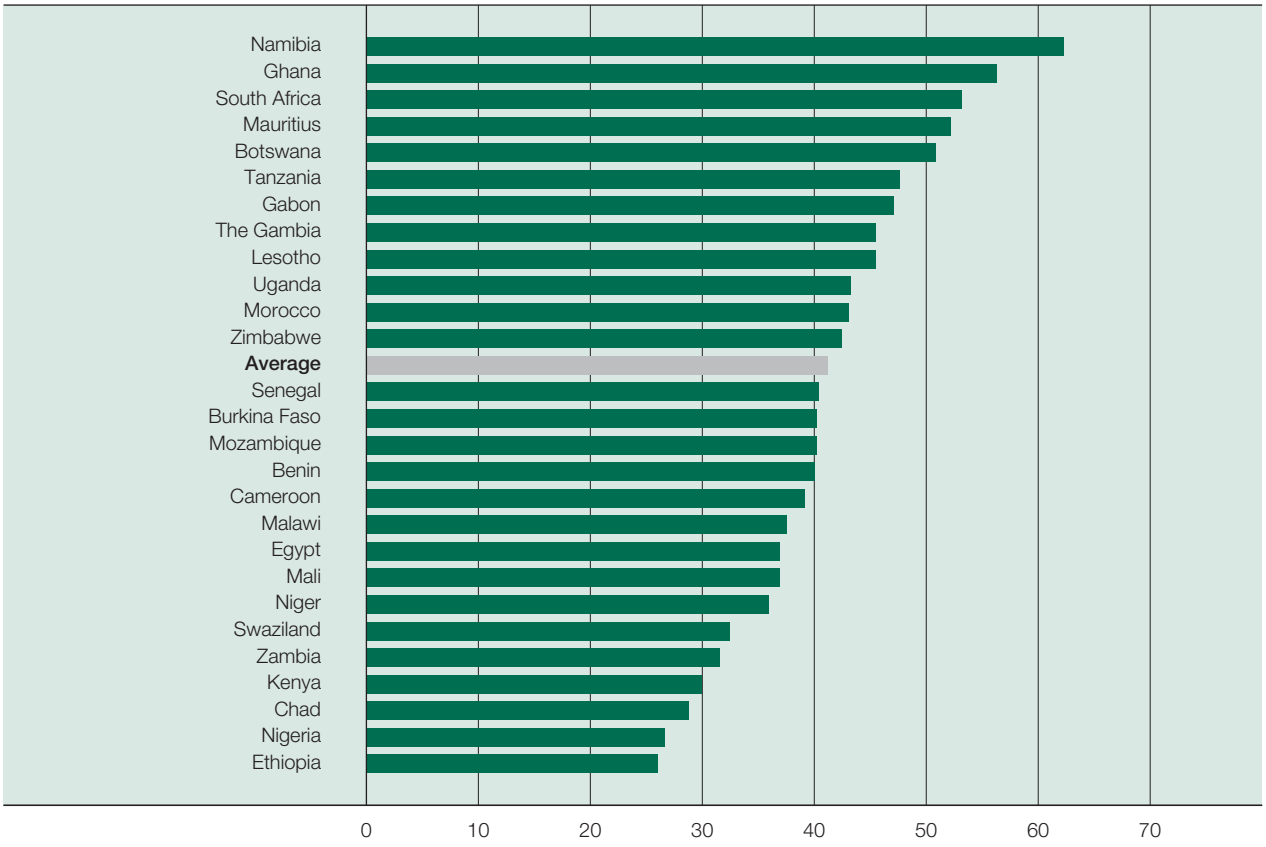
There are three major institutional channels through which social services are provided: the government, the private sector and civil society

There are three major institutional channels through which social services are provided: the government, the private sector and civil society. Civil society includes self-help and community development efforts, which are common in many African societies. It is also important to distinguish between the government as provider and as producer of public services. The government can outsource or subsidise the provision of a social service to the private sector or civil society. In this case the government is the provider but not the producer of the service. The objective is usually to promote quality and efficiency in the delivery of those services.

Access, affordability and quality of public services

African countries have several initiatives and schemes to address the needs of poor people. But most of the experts surveyed do not believe that the governments have been successful (figure 5.11). Only in Namibia did more than 50% of the experts

Figure 5.12 Governance index on the efficiency of government services
Index (0 = worst, 100 = best)



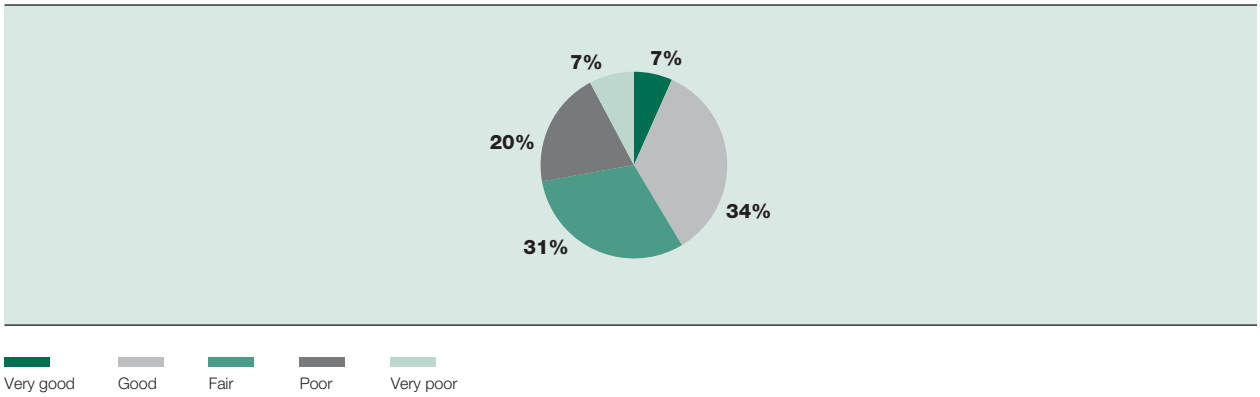
Source: ECA governance survey of experts

indicate that the government fully or moderately addresses the needs of the poor. In 16 of 27 countries more than a half said that government services poorly or do not address the needs of the poor. The average share of experts surveyed who said that government services fully or moderately address the needs of the poor for 27 countries was 17%; the average who said that they poorly or do not address the needs of the poor was 58%.

The governance index based on the responses of experts surveyed on the efficiency of government services largely reflects the results observed in the household survey (figure 5.12). The cross-country average for project countries on the efficiency of government services is about 42 on a 100-point scale. But there are wide variations among countries in terms of how well the people perceive public services to be delivered.

Figure 5.13 Household opinion on the quality of government health services provided equitably

Share of households surveyed, average across all project countries (%)



Note: Values do not sum to 100% because no adjustment is made for non-responses

Source: ECA governance survey of households

The gravity of the situation is reflected in the confidence of the households surveyed on the ability of their government to deal with the problems identified. Only about a third of the households surveyed are highly or quite confident that their government will promptly and effectively deal with the problems they face, compared with 38% who were not or rarely confident in the performance of their governments (as per figure 5.10). In Lesotho, Mali, Namibia and Nigeria more than 40% of the households surveyed are highly or quite confident of their government's ability to deal promptly and effectively with these problems, but in Benin, Botswana, Chad, Gabon, Kenya, South Africa and Zimbabwe, more than 40% were not or rarely confident about the performance of their governments.

The average share of experts surveyed across all project countries who said that citizens have ready or mostly ready access to services is about 30%, but shares ranged from nearly 80% in Namibia to less than 10% in Kenya

The overall picture on access to government services is not very encouraging. The average share of experts surveyed across all project countries who said that citizens have ready or mostly ready access to services is about 30%, but shares ranged from nearly 80% in Namibia to less than 10% in Kenya.

The ratings from the household and expert surveys on performance of specific services differ by service and country. On average, 42% of the households surveyed described government health services as very good or good, while only 27% described them as very poor or poor (figure 5.13). In Burkina Faso, Mali, Mauritius, Mozambique and Nigeria more than 50% of the households surveyed described the government health services in their localities as very good or good, and only in Uganda did more than 50% describe services as poor or very poor.

The results of the household survey on the adequacy of educational services suggest some satisfaction on the part of respondents. Some 50% of the households surveyed said that the adequacy of buildings was very good or good, 55% said that trained teachers were very good or good, and 37% said that materials were very

Figure 5.14 Household opinion on the quality of educational services in the community

Share of households surveyed, average across all project countries (%)

Note: Values do not sum to 100% because no adjustment is made for non-responses

Source: ECA governance survey of households

good or good (figure 5.14). The surveys indicate that in Burkina Faso, Ethiopia, The Gambia, Lesotho, Mauritius, Mozambique, Namibia,South Africa, and Tanzania the people regard the quality of public education to be good. But in Chad and Uganda they do not.

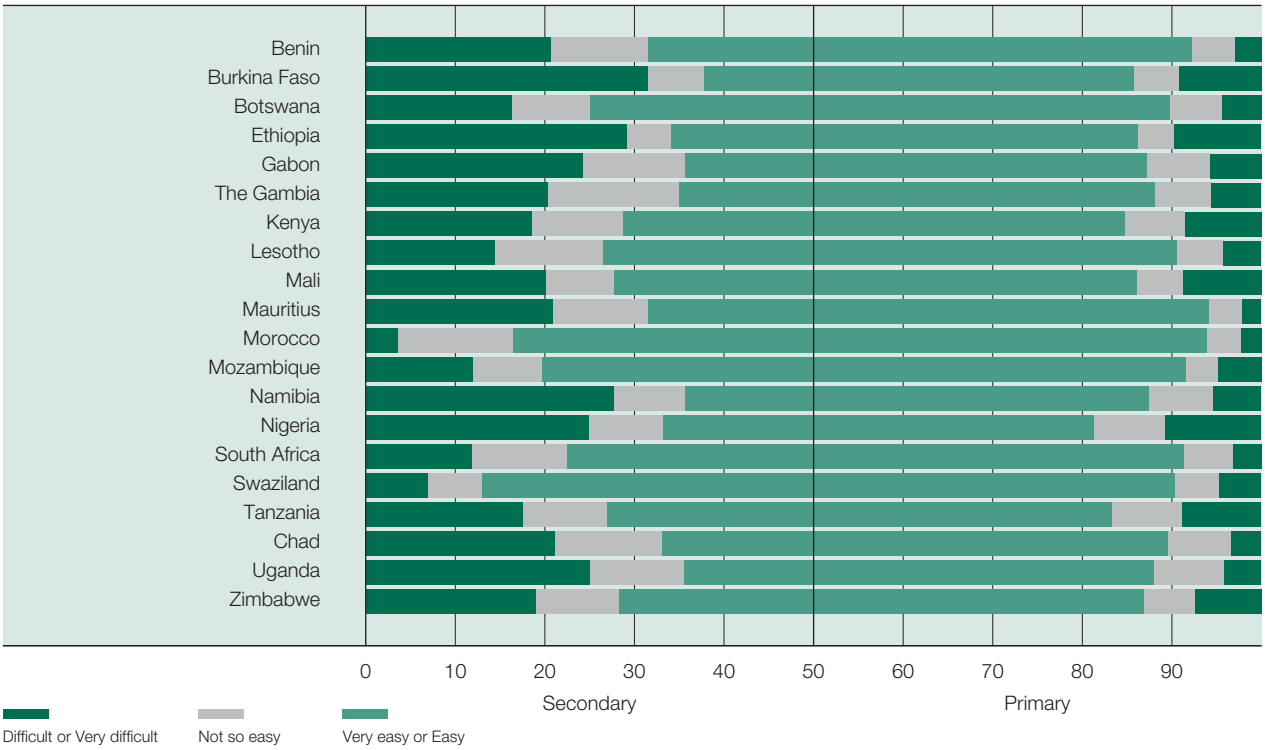
In Burkina Faso, Ethiopia, Namibia, Nigeria and Uganda, for example, few households said that they have easy access to secondary education

On access to basic health services (in terms of distance to the nearest health centre or public clinic), Benin, Botswana, Mali, Mauritius, Nigeria, South Africa and Tanzania have good ratings, with more than 60% of the households surveyed regarding the health services as accessible.

Virtually all countries in the household survey scored highly in terms of access of children to primary schools, with an average rating above 70%. But there is considerable variation across countries in terms of access to secondary schools. In Burkina Faso, Ethiopia, Namibia, Nigeria and Uganda, for example, few households said that they have easy access to secondary education (figure 5.15).

The surveys found high ratings on access to safe drinking water in Botswana, Mauritius, Morocco, Namibia, South Africa and Zimbabwe. Nigeria, Chad and Ethiopia had ratings of a dismal 30% or less. On access to electricity, except Botswana, Gabon, Mauritius, Morocco and South Africa, where at least 60% of residents reported reliable access, most countries rated poorly, with an average of only 33% of households surveyed saying that they have reliable access. On safe waste disposal, many countries performed poorly in the household ratings, except Bostwana, Kenya, Mauritius, Morocco and South Africa, where 60% or more of respondents said that they have access to safe systems.

Figure 5.15 Household opinion on access to the nearest primary and secondary public school
Share of households surveyed, by country (%)



Note: Values may not sum to 100% because no adjustment is made for non-responses

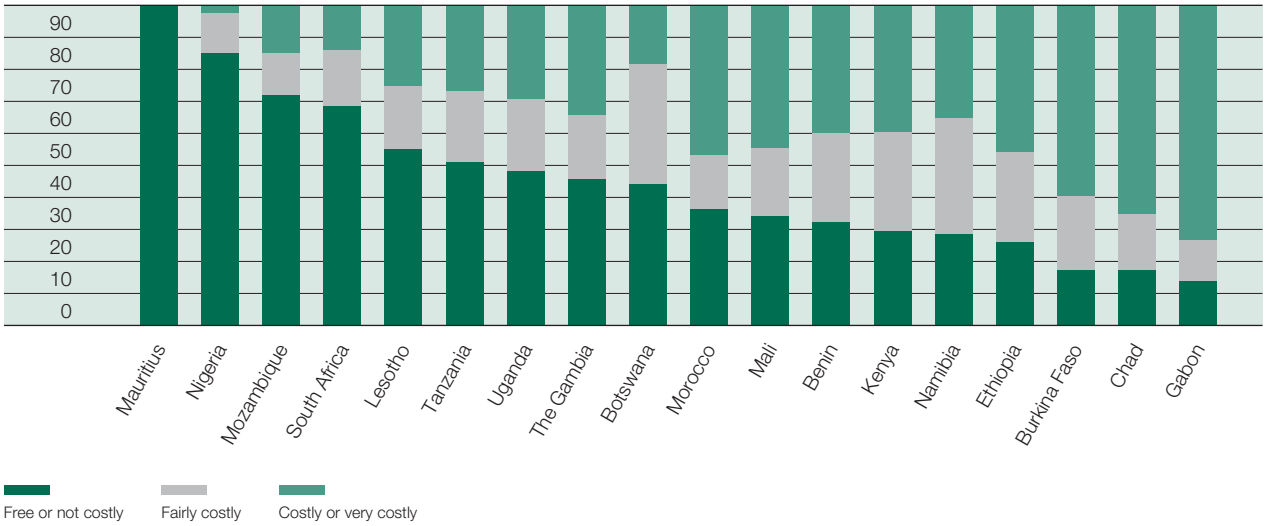
Source: ECA governance survey of households

On access to gainful employment, virtually all the countries performed badly in the household survey. An average of 68% said that they do not.

On the cost of education, there is considerable regional variation, but the majority of households surveyed said that they have never been denied access to school due to inability to pay. On the affordability of medical services in government-owned clinics and medical facilities, an average of 43.8% of households that they have been denied access to medical services based on inability to pay. The cost of government-owned medical facilities is considered to be high in Gabon, Chad and Burkina Faso, where more than 50% of the households surveyed said that services are costly or very costly (figure 5.16). By contrast, the cost of medical services was mostly perceived to be not costly or free in Mauritius, Nigeria, Mozambique and South Africa.

Figure 5.16 Household opinion on the cost of services obtained in government-owned medical facilities

Share of households surveyed, by country (%)



Source: ECA governance survey of households

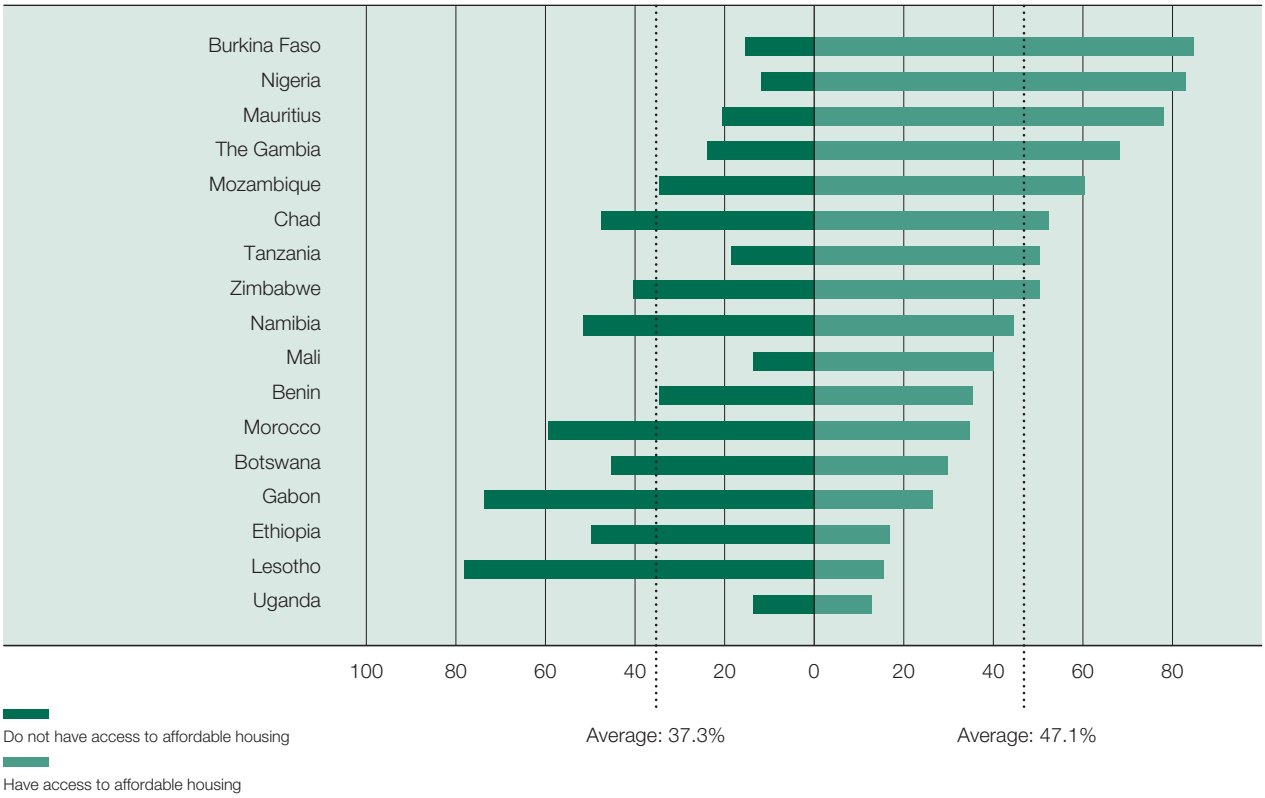
The average share across all project countries that said they have access to affordable housing was 47.1%, with Burkina Faso, Nigeria and Mauritius leading the way (figure 5.17).

Futhermore, experts in most of the project countries found that government services do not fully or adequately address the specific needs of women. In fact, in 12 out of the 27 countries surveyed, more than a half of the experts indicated that services either poorly or do not address womens' needs at all. Even in the countries that are most gender sensitive in service provision, the majority of experts still agree that much more needs to be done (as per figure 1.9).

Related to the economic services, in the 19 countries surveyed on agricultural issues 51% of the respondents said that they lacked access to agricultural extension services, 61% lacked government credit for agriculture, and 57% lacked access to irrigation facilities. Even the availability of land for agriculture seems to be a problem, with 36% of households surveyed saying that they did not have access to land for agriculture. Given that the vast majority of Africans are engaged in agriculture and that a disproportionate number of farmers are poor, success in reducing and eradicating poverty requires African countries to make greater effort in providing extension services, government credit and irrigation facilities.

Lastly, African governments have taken some steps to develop an efficient physical infrastructure. But the meagre progress thus far is reflected in the results of the household surveys on the degree of satisfaction with the adequacy of transport, particularly of roads. An average of only 7% of the households reported that the

Figure 5.17 Household opinion on access to affordable housing
Share of households surveyed, by country (%)



Source: ECA governance survey of households

transport system in their country is very good, 24% good, 25% fair, 28% poor and 17% very poor. In only 3 of the 19 countries (Mauritius, Botswana and South Africa) did more than 50% of households say that the transport system is very good or good, while in 7 countries (Chad, Zimbabwe, Uganda, Burkina Faso, Ethiopia, Gabon and Lesotho) more than 50% of the households surveyed said that the transport system is poor or very poor.

The level of dissatisfaction with the provision of roads is even greater than that for transport as a whole. An average of only 4% of households said that the provision of roads is very good, 18% good, 22% fair, 36% poor and 20% very poor. Only in Mauritius did more than a half report the roads to be very good or good. By contrast, in 14 countries, more than a half of households indicated that they are poor or very poor.

Across the continent HIV/AIDS is posing a great challenge to governance in terms of human capacity losses, human rights and human development and security

Response to the HIV/AIDS pandemic in Africa

In the last two decades HIV/AIDS has proven to be the most devastating epidemic in developing countries and a core development issue. Africa is the continent most

severely ravaged by HIV/AIDS. It is reducing the living standards of communities, diminishing their capacity for personal and social achievement and reversing social and economic gains secured over the past several decades. Across the continent HIV/AIDS is posing a great challenge to governance in terms of human capacity losses, human rights and human development and security. The epidemic is a cross-cutting problem that affects all aspects of social and economic life, including education, health, water and sanitation, agriculture, transportation, communication, business and economy. HIV/AIDS invariably has the potential to crush much-needed service delivery structures as well, which are, of course, fundamental to successfully tackling it full scale.

HIV/AIDS invariably has the potential to crush much-needed service delivery structures as well, which are, of course, fundamental to successfully tackling it full scale

The statistics on the toll of the epidemic in Africa are grim enough, but more alarming still are forecasts of the consequences on society, communities and the state over the medium to long term. The Joint United Nations Programme on HIV/AIDS (UNAIDS 2002) estimates that some 20 million people have died since the beginning of the epidemic 1981. Another 30 million are living with the virus, and most of them will die within the next 10 years. The demographic trends of HIV/AIDS prevalence in Africa vary by country and region, but it is clear that the epidemic has taken a toll on the most productive and reproductive members of society between the ages of 15 and 45. In addition, the prevalence of HIV infection is escalating among women and girls, who tend to have the most important household responsibilities, including taking care of the family. In the most affected countries the prevalence rate among 15- to 24-year-olds is up to six times higher for women than for men. Thus, HIV/AIDS is systematically undermining each of the three components of the human development index: longevity, education and standard of living. Subsequently, life expectancy has dropped drastically in sub-Saharan Africa since the AIDS pandemic. In 11 southern African countries life expectancy during the next decade is only expected to reach around the 30's in the absence of antiretroviral treatment (WHO 2000).

The highest prevalence rates of HIV/AIDS are in East and Southern Africa—in Botswana, Kenya and South Africa. In Kenya the rate of infection rose from 4.8% in 1990 to almost 13.5% by 2000 and to 15% in 2002. UNAIDS (2002) estimated that the adult infection rate in 2002 ranged from 15% in Malawi to a staggering 39% in Botswana. South Africa, the country with by far the fastest spread of the disease, has an adult infection rate of 20%—4.7 million people living with HIV/AIDS, the highest in the world. While the infection rate in Ethiopia is a relatively low 6.6%, it is among the fastest growing in Africa, with an infection rate of one in six adults in urban areas (Federal Ministry of Health, Ethiopia). Prevalence rates in West and Central Africa are comparatively lower, although some countries have high enough rates to require urgent action: Cameroon at 12%, Burkina Faso at 7.5% and Nigeria at 6% (see also table 5.1).

The governance challenge

The HIV/AIDS epidemic has created serious governance challenges for African countries, including:

- The weakening of the institutional capacity of African states as workforces are devastated by the epidemic.

Table 5.1 HIV/AIDS prevalence in selected African countries

	People living with HIV/AIDS (thousands)	2001 HIV/AIDS adult prevalence (%)	AIDS orphans, cumulative (thousands)
Benin	110	3.8	34
Botswana	300	39.4	69
Burkina Faso	380	7.5	69
Egypt	—	0.0	—
Ethiopia	1,900	6.6	990
Ghana	330	3.4	200
The Gambia	8	1.2	5
Kenya	2,300	15.0	890
Lesotho	330	33.5	73
Malawi	780	15.2	470
Mali	100	2.0	70
Mauritius	1	0.1	—
Namibia	200	24.4	47
Nigeria	3,200	6.0	1,000
Senegal	24	0.5	15
South Africa	4,700	—	20
Swaziland	150	33.3	35
Tanzania	1,300	—	8
Uganda	510	5.0	880
Zambia	1,000	—	21
Zimbabwe	2,000	33.5	780

— not available

Source: OECD and ADB 2003

- The diversion of scarce resources to treat HIV/AIDS from the other basic needs of society.
- The decline in capital formation and economic growth as human capital and productivity decline.
- The deepening of the social crisis caused by the dislocation of families due to death from HIV/AIDS.
- The threatening of the national security due to high rates of infection for military personnel.

Some countries, such as Senegal and Uganda, have taken bold political initiatives to address HIV/AIDS

Some countries, such as Senegal and Uganda, have taken bold political initiatives to address HIV/AIDS. Senegal's approach to the HIV/AIDS scourge has been more preventive, given the country's prevalence rate of 0.5%—one of the lowest on the continent. The Ministry of Health successfully partnered with the National Council for the Campaign Against HIV/AIDS. Leaders from government, civil society,

business and the arts and media recently embarked on more HIV/AIDS initiatives to reinforce the country's successes in limiting the spread of the disease. These efforts aim to keep the adult infection rate below 3%, improve the quality of life for people living with HIV/AIDS, reduce the socioeconomic impact of the epidemic and make antiretroviral treatment and medication against opportunistic infections available.

In Uganda the government's determination to tackle the problem led to a decline in the infection rate. Having realised early on that HIV/AIDS is a multisectoral problem whose solution cannot be confined to the Ministry of Health and must be addressed by Ministries of Finance, Education, Planning and Agriculture, the government adopted policy measures that included intensive and massive information packages disseminated through electronic and print media, establishment of intervention agencies and organisations such as local care giving, advocacy and education organisations and establishment of a Ugandan AIDS Commission in 1991 to facilitate and coordinate AIDS activities from a multisectoral perspective (Armstrong 1995). Since 1991 the Uganda AIDS Commission has implemented a multisectoral strategy with positive results:

African countries will have to make difficult and strategic political choices on how to tackle HIV/AIDS in a less costly but more efficient manner

- National policy on HIV/AIDS formulated and effectively implemented.
- A strengthened national multi-sectoral research framework.
- A scaled up capacity for sectors and districts to respond to the epidemic.
- Strong sectoral, district, regional and global linkages for HIV/AIDS work.
- Intensified advocacy for the HIV/AIDS national programme.
- Strengthened information gathering and sharing systems.

African countries will have to make difficult and strategic political choices on how to tackle HIV/AIDS in a less costly but more efficient manner. Increasing public spending on treatment and containment, decentralising problem solving to the grassroots and community levels, involving a broad group of stakeholders (civil society, the private sector, the media, traditional rulers and the international community) in the AIDS reduction efforts, and providing adequate information and education on the problem and a sustained political will to address the issue are all necessary steps. The international community has a key role in the fight against HIV/AIDS in Africa. Apart from bilateral and multilateral assistance from developed countries to combat the disease, the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights must be relaxed for such life-saving drugs as antiretrovirals in order to improve accessibility to people in need. As UNDP (2003) notes, "in poor countries it is basically impossible to pay international prices for life-saving medicines and also criminal to expect poor people to do so" (p. 8). Generic substitutes must be produced for millions of people who are near death.

Concluding remarks

The institutional effectiveness and accountability of the executive and its performance in the delivery of basic social services have been quite uneven. While some countries have made modest progress in building capacity for their bureaucracy in terms of professionalism, good work ethic, fair remuneration and insulation from political interference, in most African countries the public service is in dire straits.

African countries will have to do better in adhering to the basic norms of merit, capacity and performance in guiding recruitment and career mobility in the civil service because recruiting based on criteria other than merit undermines the institutional capacity of the bureaucracy, promotes inefficiency, poor service delivery and corruption and compromises the integrity of the public service. Furthermore, cooperation and balance should be secured between the executive and the bureaucracy in formulating and implementing public policies.

Public service delivery in education, health, sanitation, waste disposal and good water supply are grossly inadequate and of poor quality in many African countries

That many public institutions in Africa have their integrity questioned complicates the problem of corruption and efforts to eliminate it. There are both short-term and longer-term measures that need to be taken to promote more transparency and tackle corruption across all levels of society. Granting institutions relative autonomy to free them from undue political interference and improving the salaries of public officials is one immediate option to reduce their vulnerability. The use of information technology in public administration (i.e., e-governance) can also play a major role in reducing the discretion of public officials by helping to condense the number of administrative steps taken in the completion of an administrative or service delivery process while simultaneously enhancing its transparency.

At the higher levels of authority, leaders should serve as role models in the fight against corruption by declaring their assets upon assuming office, talking about corruption openly and publicly, and imposing heavy sanctions on officials of public regulatory institutions that indulge in corrupt practices. A strong alliance is also needed between the Judiciary, the Legislature and nonstate actors—including civil society, the media, political parties and the private sector—to monitor and denounce corrupt practices, inform the citizens of their rights and duties, and promote the values of integrity, accountability and honesty in society. Finally, multinational and transnational corporations need to become more sensitised and involved in the fight against corruption, ensuring that the requisite mechanisms for accountability are in place. Regional and international institutions also need to encourage the enforcement of laws and exchange of best practices in the fight against corruption.

Public service delivery in education, health, sanitation, good water supply and other services is grossly inadequate and of poor quality in many African countries. Governments in Africa will have to commit more resources to the basics, which are so key to overall national development. Public-private partnership is the new strategy for service delivery in many African countries, but the public sector has an important role in regulating the quality of and access to services. The weak and vulnerable in society must be assured access to public services even if they cannot pay. There thus must be a blend between market and public interest in making policy decisions on service delivery in Africa. And governing HIV/AIDS requires the political authority to realise that the disease is not simply a health issue but a cross-cutting problem that can reverse the modest gains made in national development. It deserves urgent political priority and commitment across all sectors of government.

References

(ADB) African Development Bank, 2003. *African Development Report 2003: Globalisation and Africa's Development*. Oxford, U.K.: Oxford University Press.

Armstrong, J., 1995. "Uganda's AIDS Crisis: Its Implications for Development." Discussion Paper 298. World Bank, Washington, D.C.

Ayenew, Meheret and Paulos Chanie, 2000. "The Contribution of the Civil Service to Good Governance in Ethiopia: Challenges and Prospects," presentation made at the Organization for Social Science Research in Eastern and Southern Africa (OSSREA) regional conference on "Promoting Good Governance and Wider Civil Society Participation in Eastern and Southern Africa" on 6th-8th November 2000 in Addis Ababa, Ethiopia.

Barkan, J., 1992. "The Rise and Fall of a Governance Realm in Kenya," In Goran Hyden and Michael Bratton (Eds.), *Governance and Politics in Africa*. Boulder, Colorado: Lynne Rienner Publishers.

(CDD) Centre for Democratic Development, 1999. "Ghana Governance and Corruption Survey; Evidence from Households, Enterprises and Officials," Accra.

Christiaensen, Luc, Lionel Demery, and Stefano Paternostro, 2002. "Growth, Distribution and Poverty in Africa: Messages from the 1990s." Policy Research Working Paper 2810, World Bank, Washington, D.C.

Eigen, Peter, 2003. "Nine out of ten developing countries urgently need practical support to fight corruption, hightlights new index," at the launch of *Transparency International Corruption Perceptions Index 2003,* Foreign Press Association, October 7, London.

Federal Ministry of Health, Government of Ethiopia, 2002. "AIDS in Ethiopia", 4th Edition, October, Addis Ababa.

Good, Kenneth, 1997. "Accountable to Themselves: Predominance in Southern Africa." *Journal of Modern African Studies* 35(4): 547–73.

Hyden, Goran, 1992. "Governance and the Study of Politics", in Goran Hyden and Michael Bratton (Eds.), *Governance and Politics in Africa*. Boulder, Colorado: Lynne Rienner Publishers.

(IER) Institute of Educational Research, 2002. Corruption Survey in Ethiopia, Addis Ababa.

OECD (Organisation for Economic Co-operation and Development) and ADB (African Development Bank), 2003. *African Economic Outlook 2002/2003*. Paris.

Olowu, Dele B., 1999. "Combating Corruption in Economic Crime in Africa: An Evaluation of the Botswana Directorate of Corruption and Economic Crime," *The International Journal of Public Sector Management*. London. Vol. 12, No. 6 & 7.

Rasheed, Sadig, 1995. "Promoting Ethics and Accountability in African Public Services," in Sadig Rasheed and David F. Luke (Eds.), Development Management in Africa. Boulder, Colorado: Westview Press.

Transparency International, 2004. *Transparency International Corruption Perceptions Index 2004*, London.

(UNAIDS) Joint United Nations Programme on HIV/AIDS, 2002. *Report on the Global HIV/AIDS Epidemic*, Geneva.

(UNDP) United Nations Development Programme, 2003. *Human Development Report 2003: Millennium Development Goals: A Compact among Nations to End Human Poverty*. New York: Oxford University Press.

(WHO) World Health Organisations, 2000. "WHO Life Expectancy Rankings." Washington, D.C. and Geneva, Switzerland.

6

Human rights and rule of law

Respect for human rights and rule of law is among the most important indicators of good governance. Equally basic norms and institutions of a democratic society—accountability, transparency, deliberation, equality, justice and so on—are essential for realising human rights. Human rights norms, especially as they have evolved over the last 60 years, define the accepted values and standards of treatment of individuals and groups and thereby set the limits of state power in national contexts. Similarly, rule of law is concerned with the proper exercise of authority and power by the state. It stipulates the appropriate values and substantive standards for governance (such as transparency and accountability) and mandates certain processes in order to limit arbitrary use of power.

The centrality of human rights and rule of law to good governance and the creation of democratically functional society have led to the evolution of universally accepted norms and standards of human rights practises. International laws, conventions and statutes on human rights have been adopted and incorporated into national laws. National constitutions and institutions in many countries have also been developed to protect and promote human rights and rule of law. The status of the individual and groups, the scope of acceptable state and government conduct, international protection for vulnerable and marginalised segments of society and the prohibition of certain heinous crimes are some of the themes governed by human rights.

Disrespect for human rights and rule of law undermines good governance and signifies the possibility of conflict, disorder and anarchy in society

The human rights framework reflects the crucial interdependence of economic, social and cultural rights and civil and political rights. Most African countries have signed, ratified or acceded to the major international human rights instruments, and their constitutions and other laws have endorsed human rights and rule of law as essential concepts for organising their societies. Through the African Union and other regional instruments and initiatives, African countries have also affirmed the relevance of both concepts and pledged to uphold rule of law, to protect and promote the fundamental human rights contained in the treaties and their national constitutions and to uphold the principles of good governance.

Good governance requires respect for human rights, compliance with accepted standards and norms such as reporting, establishment of requisite institutions (courts and human rights institutions) and consistent enforcement. Disrespect for human rights and rule of law undermines good governance and signifies the possibility of conflict, disorder and anarchy in society.

This chapter reviews the state of human rights and rule of law in Africa, relying largely on the results of the studies conducted in project countries. The first section describes the international and regional human rights frameworks in the African context, outlines the commitments and normative obligations that countries assume. The second examines the state of human rights in the continent and attempts to identify and analyse the key challenges to realising human rights. The third part proposes strategies to improve the human rights situation with simple actions that countries can take, individually or collectively, to create a more conducive human rights regime that adheres to well established norms and standards across all segments of society.

The African human rights framework

While African countries have overwhelmingly subscribed to most international and regional human rights norms and standards, ratified numerous treaties and enshrined these norms and standards in their constitutions and legislations, a significant gap remains in their realisation

Human rights standards have become increasingly well defined, and broad in scope, reflecting economic, social, political, civil and cultural entitlements. They also embody international consensus on the minimum requirements for a life with dignity. Human rights seek to ensure the substantive equality of all people and help to identify people and institutions with a particular responsibility to act.

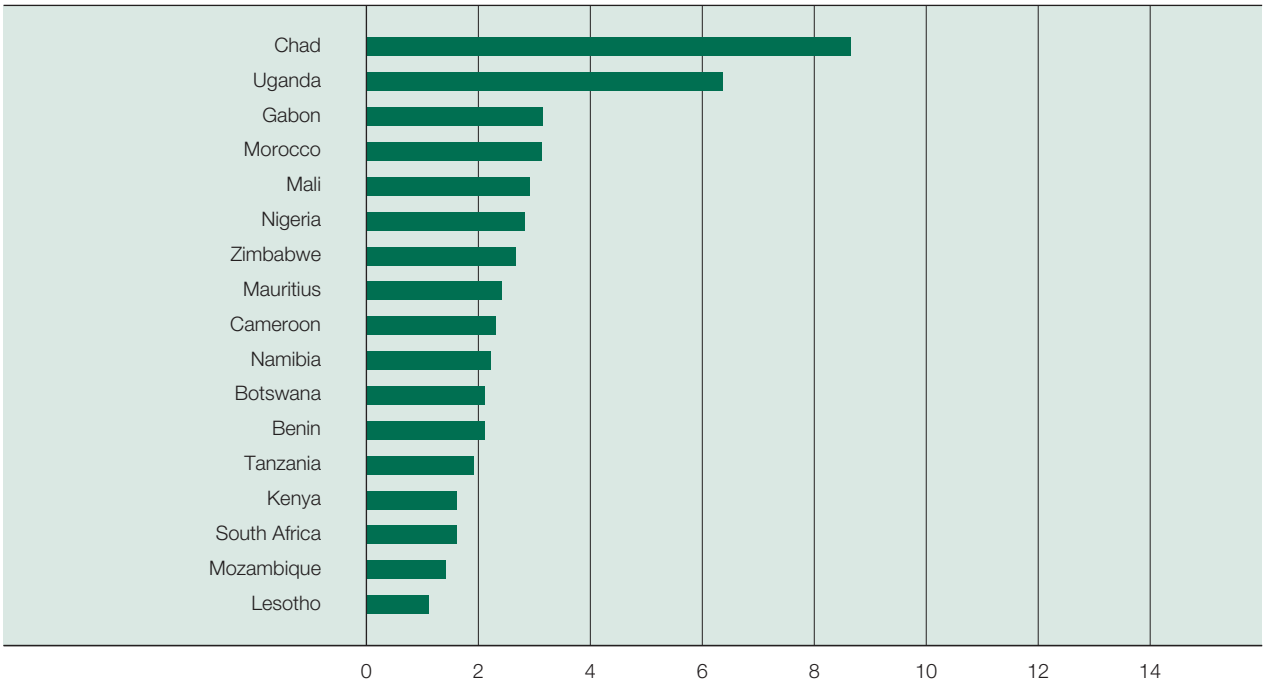
While African countries have overwhelmingly subscribed to most international and regional human rights norms and standards, ratified numerous major human rights treaties and enshrined these norms and standards in their constitutions and national legislations, a significant gap remains in their realisation. Some progress has been made on human rights, but the application of human rights standards lags behind the substantial efforts made in ratifying human rights treaties and conventions and the public statements and rhetoric of African leaders on human rights. The challenge is therefore to narrow this gap and make human rights a reality in all spheres of life, particularly for the most vulnerable groups in society.

The majority of the households surveyed said that human rights are not a serious national problem as compared to poverty, unemployment and corruption, for instance. An average of only about 3% of households across countries indicated it was the most serious issue as compared to poverty, unemployment and corruption, for instance. In relative terms, however, Chad and Uganda had the highest percentage of respondents who said human rights violations are the most significant problem in the country (figure 6.1). Human rights violations generally ranked lowest against other options, with some regional variation (refer also to figure 5.10).

African leaders have affirmed commitments to human rights and rule of law through the Constitutive Act of the African Union (AU), the New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic and Corporate Governance and the Memorandum of Understanding on the African Peer Review Mechanism (APRM), among others. African leaders commitment to human rights is highlighted in the Declaration adopted by the 38th Ordinary Session of the Assembly of Heads of State and Government in Durban, South Africa, 8 July 2002 (box 6.1). The Constitutive Act of the AU declares one objective of the union to be promoting and protecting human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant international

Figure 6.1 Household opinion that human rights violations were the most serious national problem

Share of households surveyed, by country (%)



Note: Other options were corruption, inefficient government services, unemployment, poverty, HIV/AIDS, crime and lack of security

Source: ECA governance survey of households

instruments. Among the AU's guiding principles is the respect for democratic principles, human rights, rule of law and good governance.

Although the Millennium Declaration, NEPAD, the Conference on Security, Stability, Development and Cooperation in Africa and other initiatives are technically not legally binding, they are important as political commitments that reflect the increased awareness that the respect for human rights is essential for overcoming socioeconomic and political challenges. The human rights framework reflects the crucial interdependence of economic, social and cultural rights and civil and political rights.

Box 6.1 NEPAD affirms respect for human rights in Africa

"In the light of Africa's recent history, respect for human rights has to be accorded an important urgency all of its own. One of the tests by which the quality of a democracy is judged is the protection it provides for each individual citizen and for the vulnerable and disadvantaged groups. Ethnic minorities, women and children have borne the brunt of conflicts raging on the continent today. We undertake to do more to advance the cause of human rights in Africa generally and, specifically, to end the moral shame exemplified by the plight of women, children, the disabled and ethnic minorities in conflict situations".

Source: NEPAD 2002

The African human rights framework has evolved from the African Charter on Human and Peoples' Rights, which borrowed largely from other international human rights instruments. The charter is different from other international and regional human rights instruments in that it makes no distinction between civil and political rights and economic, social and cultural rights. It also introduces the concept of people's rights and duties. The African Charter on the Rights and Welfare of the Child, which was adopted in July 2003 as the first human rights instrument of the AU, and the Protocol to the African Charter Related to the Rights of Women in Africa, which came into force in November 1999, complete the African human rights framework.

In contrast with the growing body of human rights instruments, regional mechanisms for promoting and enforcing human rights remain weak

Two core documents, the Grand Bay Declaration and Plan of Action (1999) and the Kigali Declaration on Human Rights in Africa (2003), are essential to the policy statement of the AU's human rights agenda and relate to the human rights challenges of Africa and suggest concrete actions. Furthermore, other treaties and decisions by African heads of state and government at the continental and regional levels that could be embraced within the body of regional human rights instruments include the Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa, the AU Convention on Corruption and the Algiers Convention on Terrorism.

In contrast with the growing body of human rights instruments, regional mechanisms for promoting and enforcing human rights remain weak. The African Commission on Human and Peoples' Rights, the independent body charged with overseeing the implementation of the provisions of the African charter, is still unable to fully discharge its functions due to a combination of factors.

The African Committee of Independent Experts was created under the African Child Charter, but its operation has so far been limited by availability of resources, despite the alarming situation of the African child. A court on human and peoples' rights is being created to fight impunity and offer victims of human rights violations the remedies denied by weak or unwilling national judicial authorities. The charter establishing the African Court on Human and Peoples' Rights is in the process of being ratified by the required number of members of the AU and the modalities for setting up the court are currently being worked out.[1]

The state of human rights and rule of law

In general, the studies and reviews reveal a complex picture. Clearly, there has been substantial progress in the last 40–50 years in the acceptance of human rights in Africa. African countries have ratified almost all the major human rights instruments and have affirmed faith in international human rights through various forums, but significant challenges remain in realising human rights in Africa. The universality of human rights remains formal rather than real. Inequalities and injustices against women and children are widespread, as are racism and ethnic discrimination.

Acceptance of human rights and rule of law

The principle of rule of law is generally respected in most countries along with a fair level of commitment to the respect for human rights. For example, in Namibia, Botswana, South Africa, Ghana, Mauritius, Lesotho and Senegal there is considerable adherence to rule of law, but in Zambia, Uganda, Mali, Nigeria, Burkina Faso and Malawi experts raised questions to the commitment of government agencies to respecting and implementing rule of law. On the whole, African governments do not systematically violate the fundamental freedoms of the people as has occured in the past; rather most violations are the result of an administrative dysfunction involving negligence or culpable silence.

It is also very rare to hear any challenge to the relevance of human rights. Political rhetoric by African leaders on human rights clearly confirms this. At the political level significant progress has been made on human rights issues. The incorporation of human rights in the Constitutive Act of the AU makes an unequivocal statement about the importance of human rights as part of the regional agenda, as do NEPAD and the Conference on Security, Stability, Development and Cooperation in Africa.

On the whole, African governments do not systematically violate the fundamental freedoms of the people as has occured in the past; rather most violations are the result of an administrative dysfunction involving negligence or culpable silence

National constitutions and laws

The basic principles in the Universal Declaration of Human Rights are restated in most national constitutions and incorporated into national laws. The detailed provisions on human rights contained in African constitutions give national expression to the rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights (UN General Assembly 1966a, 1966b). The constitutions of all African countries guarantee the civil and political rights of every citizen as well as the democratic values of human dignity, equality and freedom. In terms of the bill of rights, they guarantee without qualification the right to equality before the law, human dignity and inviolability of the individual. They prohibit all forms of malicious treatment and exploitation especially slavery, torture and degrading punishment. And they guarantee the right to a fair hearing, including the right to be heard, to appeal, to be presumed innocent, to be defended by counsel of one's choice and to have a trial within a reasonable time by an impartial court or tribunal. In practice, however, power tends to be distorted in favour of the state.

African constitutions often recognise that fundamental human rights and freedoms of the individual are inherent and not granted by the state and that these rights must be respected, upheld and provided by all organs and agencies of government and by all persons. Liberty is thus protected as a general concept embracing all of a man's or woman's rights and interests in a free and democratic society. Some national constitutions, such as South Africa's, go further and include justiciable socioeconomic rights.

The national constitutions further provide for equality of all before and under the law in political, economic, social and cultural life and grant equal protection of the law to all citizens. For example, the Tanzanian constitution had been considered deficient in terms of equality before the law because it did not outlaw discrimination on the basis of gender in the application of customary law. This shortcoming was corrected by a constitutional amendment in 2000.

One drawback is that many African constitutions contain "claw back provisions", which limit human rights by saying that some rights are not available in certain situations, for instance, in the interest of national security. These provisions tend to be abused.

Popular perceptions

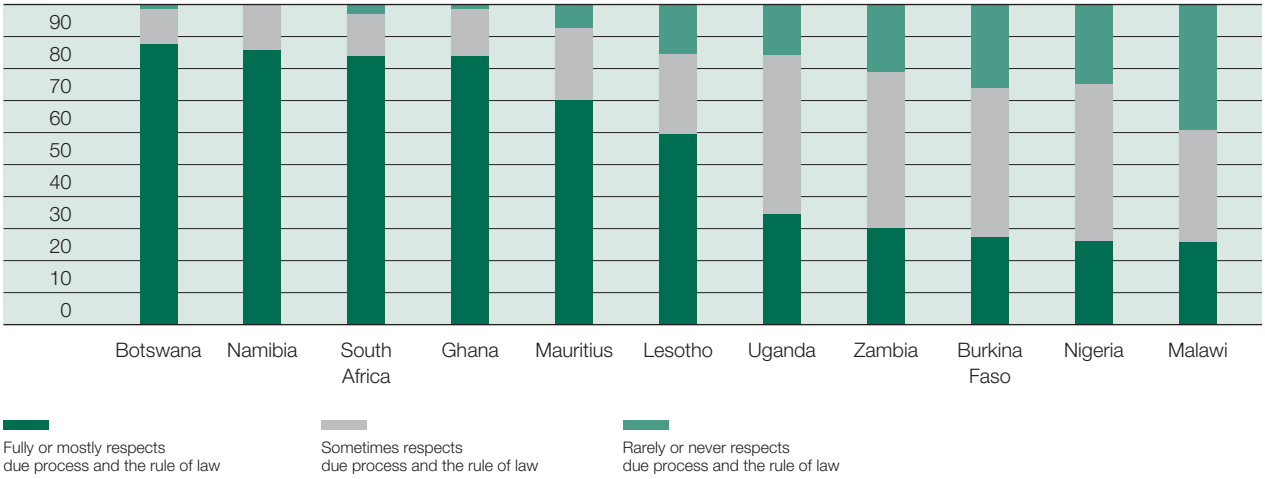
According to the expert survey, the leaderships' respect for the due process and the rule of law is relatively good

Most national country reports suggest that people in African countries are satisfied with how national constitutions establish the parameters of state power, the scope of citizens' rights and checks and balances. But how much the rights enshrined in the constitution are respected by the leadership and protected by government agencies, especially the courts and law enforcement agencies is questionable.

According to the expert survey, the leaderships' respect for the due process and the rule of law is relatively good. In Botswana, Namibia, South Africa, Ghana, Mauritius and Lesotho, at least a half of the experts surveyed indicated that the leadership fully or mostly respects rule of law and due process; the majority indicated the government sometimes respects it in Uganda, Zambia, Burkina Faso and Nigeria; and 40% of those polled in Malawi felt leadership rarely respects it (figure 6.2). On average across project countries, nearly 30% said the goverment fully or mostly respects the law, while 46% reported it sometimes does and some 24% indicated it rarely or never does.

Many leaders still violate the constitution, order citizens and political opponents to be detained without trial, suppress lawful demonstration and agitation by the people and prevent citizens' lawful assembly by citing frivolous security reasons or insisting on securing a permit that may not be granted. All these actions erode the fundamental political and civil rights of the citizens.

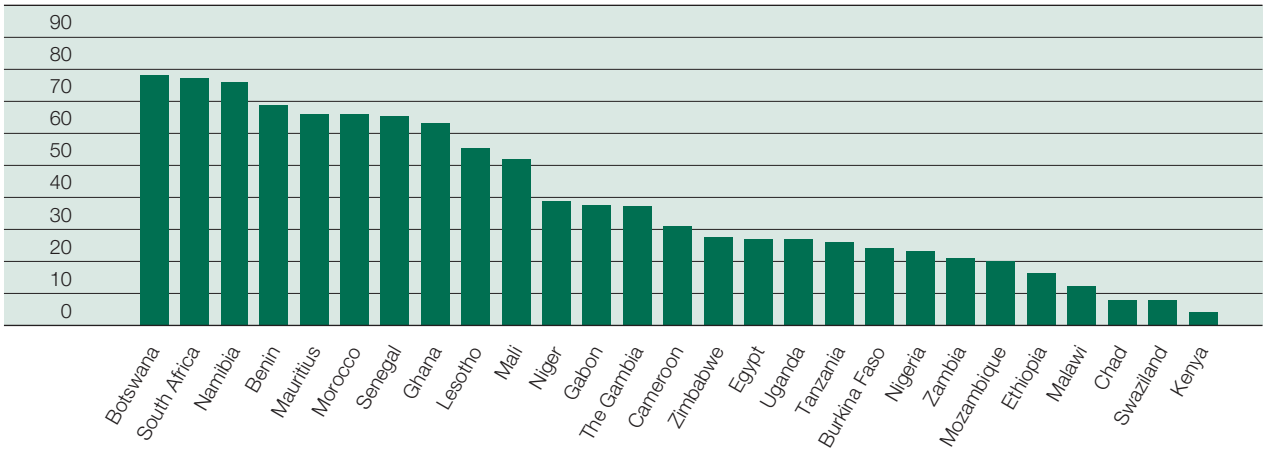
Figure 6.2 Expert opinion on government respect for due process and the rule of law
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Figure 6.3 Expert opinion that civil and political rights provided for in the constitution are always or usually being respected

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

While Kenya, Swaziland, Chad, Malawi, Ethiopia, Mozambique, Zambia, Nigeria, Burkina Faso, Tanzania, Uganda and Zimbabwe have elaborate constitutional provisions and several institutions to protect human rights, less than 30% of the experts surveyed said that these rights are always or usually respected (figure 6.3). And in Egypt the legal framework for protecting human rights is still very weak, with reported cases of human rights violations.

Violations by law enforcement agencies

Effectiveness in combating human rights violations can be gleaned from how much civil and political rights are respected by law enforcement agencies and watchdog institutions

Effectiveness in combating human rights violations can be gleaned from how much civil and political rights are respected by law enforcement agencies and watchdog institutions. In many African countries there is very low level of transparency with regard to the violations of human rights that take place in prisons, for instance, indicating poor surveillance over the conduct of prison managers and the welfare of prisoners. In many African countries prisons are overcrowded and offer poor sanitation, leading to the proliferation of such diseases as typhoid, dysentery and tuberculosis. According to the national country report, Senegal's prisons are ill-equipped and obsolete, with most of them dating back to the colonial days. They are also overcrowded. The Liberté IV prison in Dakar, for example, has 700 inmates in a facility designed for 100. In Mali the Maison Centrale d'Arrêt de Bamako Prisons built in the 1930s to hold 400–450 inmates has a population of some 1,400 detainees, some 1,100 of them accused and awaiting trial and about 270 convicted. In addition to overcrowding, medical facilities are often inadequate and food supplies limited.

In South Africa the Independent Complaints Directorate's 2001 report noted that torture and ill treatment of criminal suspects by the police remained a serious problem. It reported 650 deaths in custody as result of police action in 2001. In some of the countries surveyed, torture continues to be systematic and widespread in

detention centres throughout the country, with the authorities failing to investigate it promptly and thoroughly. The most common methods reported include electric shocks, beatings, suspension by the wrists or ankles and various forms of psychological torture, including death threats and threats of rape or sexual abuse. Torture victims came from all walks of life and included political activists and people undergoing criminal investigation.

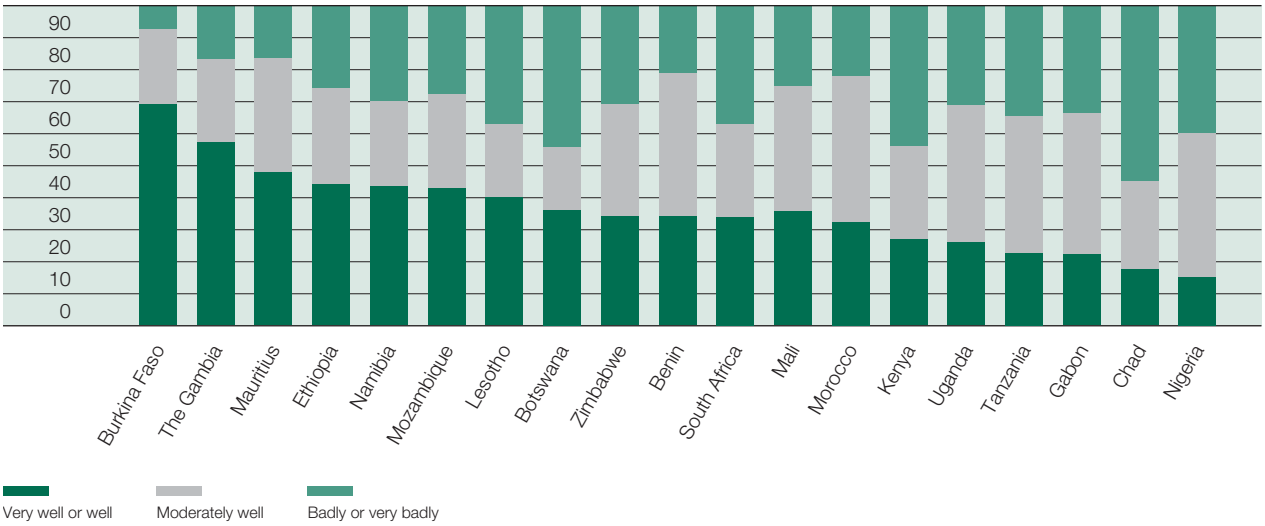
32.5% of the experts across project countries reported that they did not view the police as being adequately trained, while only 26% felt the force was

The lack of observance of human rights by security forces is generally attributed to poor training and exposure to both domestic and international human rights norms. In fact, 32.5% of the experts across project countries reported that they did not view the police as being adequately trained, while only 26% felt the force was. Indeed, only in Senegal did a majority of the experts surveyed say that police officers are adequately trained to discharge their duties efficiently. Chad, Ethiopia and Nigeria received low ratings from the expert survey on the nature and quality of training given to police officers to effectively discharge their functions in those countries.

The country studies also found that the institutions charged with protecting rights and liberties have failed to live up to citizens' expectations. As a result, in some countries the public has lost confidence in these institutions and does not consider them as having much credibility and integrity. The performance of the police in the surveyed countries is generally poor. While in Burkina Faso, The Gambia and Mauritius police performance is perceived to be quite good, in Nigeria, Chad, Gabon, Tanzania, Uganda, and Kenya households surveyed rated police performance as very poor or dismal (figure 6.4).

Figure 6.4 Household opinion on police performance

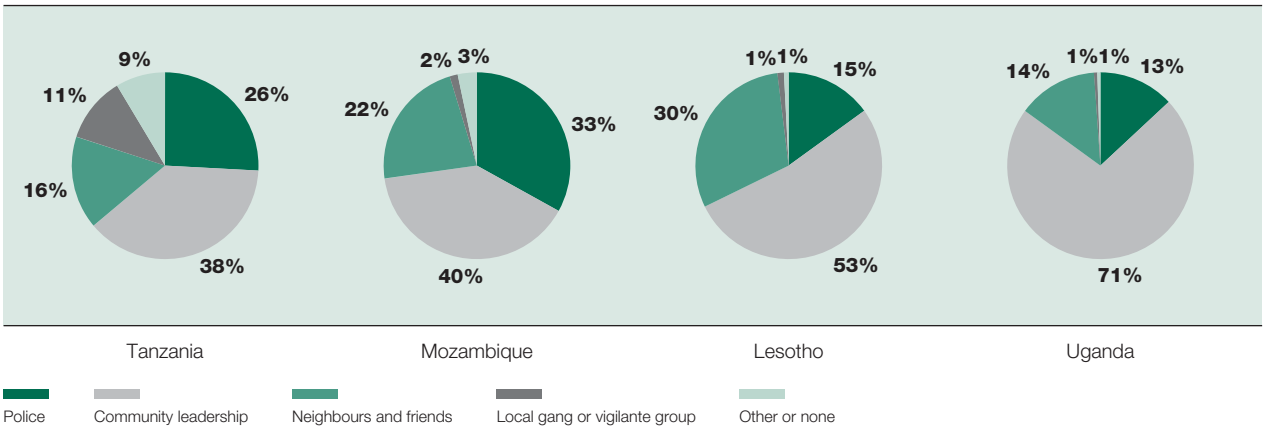
Share of households surveyed, by country (%)



Source: ECA governance survey of households

Figure 6.5 Household opinion on whom to turn to for help in response to crime in Tanzania, Mozambique, Lesotho and Uganda

Share of households surveyed, by country (%)



Source: ECA governance survey of households

In fact, many of the country reports found that a significant number of citizens report crime to community groups rather than the police because they think community groups are better able to resolve their problems. Between 38% and 71% of the households surveyed in Tanzania, Mozambique, Lesotho and Uganda preferred to report their problems or complaints to the community leadership instead of the police (figure 6.5). The ineffectiveness of the police is demonstrated by the public's perception of the following: crime as a national problem, the representative composition of the police, poor training and equipment of the police and the level of corruption and bribery.

The country studies also found that the institutions charged with protecting rights and liberties have failed to live up to citizens' expectations

In many countries the people still consider crime a serious national problem, after poverty, unemployment and corruption (as per figure 2.7). In Botswana, Mauritius and South Africa more than 10% of the experts surveyed chose crime as the most severe national problem, but in Cameroon and Gabon 3% or fewer did. As with other public institutions, a police force that does not reflect a cross-section of the country engenders a feeling of alienation from some segments of the population, which can affect its performance. In Cameroon, The Gambia, Nigeria and South Africa the composition of the police is perceived as a cross-section of the country, while in Chad it is not. With regard to equipment, an average of 57% of the experts surveyed across all the project countries said that police officers are not adequately equipped to discharge their functions efficiently; only 17% said that police officers are adequately or reasonably equipped. In some countries, the result is the emergence of civilian vigilante groups to provide security and adequate protection to the people who lost confidence in the police (box 6.2).

The power of police officers to search, arrest and detain suspects typically derives from national legislation and is exercisable only in limited and specifically defined circumstances. The police may question suspects both before and after they have been arrested, but in most countries there is a tendency for the police to arrest first and to investigate later. There is also often heavy reliance upon extracting

Box 6.2 Vigilante groups supplant the police in crime control in some countries

In many African countries citizens do not believe that the police and other security agencies can adequately protect them from crime and other human rights violations. This has led to the emergence of civilian vigilante groups. In Nigeria, South Africa and Tanzania vigilante groups have become very popular as a form of neighbourhood security, nearly supplanting the police in its public security function. Unfortunately, violence, brutality and violation of fundamental rights characterise the activities of some vigilante groups because they often dispense crude and instant "justice" to suspected criminals.

Source: National country reports

confessions rather than carrying out proper investigation, and police frequently resort to unlawful methods, including physical ill treatment.

Nearly 60% of the experts surveyed across all the project countries said that citizens have little or no confidence at all in law enforcement organs

The police services in many African countries have grossly insufficient resources in terms of numbers, training facilities and logistics. In fact, across project countries, only 8.5% of experts reported that the police was adequately equipped to discharge its duties efficiently, while the vast majority (72%) said it was poorly or not at all equipped. In Senegal, for example, there is 1 police officer for every 3,500 inhabitants and in Ghana 1 officer for every 1,218 people. These ratios are below the United Nations standard of 1 officer for every 500 people. Botswana, however, has an encouraging police-population ratio of 1 officer for every 277 people.

As a result of the increase of violent crime in many countries, reports of police harassment, use of excessive force, unlawful confinement and corruption have become routine. The police—and other law enforcement agencies—rarely respect the civil and political rights of the people, which is why there is little public confidence in them. In fact, nearly 60% of the experts surveyed across all the project countries said that citizens have little or no confidence at all in law enforcement organs (figure 6.6).

Examples of rights abuses by law enforcement agencies abound. For example, in 2001 the Kenyan police extra-judicially executed seven suspects in cold blood and in public view after hauling them off a Nairobi bus. In Nigeria members of the security forces were responsible for numerous extrajudicial executions, including a series of massacres by the military in Benue state. In Burkina Faso nearly 100 allegations of extrajudicial killings of suspected criminals were made in 2002, leading Amnesty International to call for an investigation. In Botswana's effort to combat the increasing level of crime, the police have adopted reforms to overcome the problem (box 6.3).

Civil and political rights

Protecting political rights also remains a contentious issue in African countries. Many countries do not always respect the civil rights and liberties clearly spelled out in the constitution, especially in difficult political situations. Several African countries held presidential or parliamentary elections in the last decade, and most were characterised by intimidation and gross and widespread vote rigging. There were allegations of intimidation in elections in Benin and Chad, and the Nigerian

Figure 6.6 Expert opinion on citizen's confidence in law enforcement organs to protect them from theft and crime

Share of experts surveyed, average across all project countries (%)

Source: ECA governance survey of experts

general elections of 2003 were followed by litigation. There are often accusations that the incumbents use their existing government power to win votes. Harassment of journalists and editors, self-censorship and inequality in media access always intensify as the date for elections nears. Supporters of opposition candidates are often threatened and harassed.

In many countries effective mechanisms for protecting citizens' rights in the electoral process are not in place or guaranteed. Although modest progress has been made, people in many countries still doubt the credibility and integrity of the electoral authority and its ability to undertake free, fair and transparent elections, which could result in undermining their rights. For example, in Cameroon, Kenya (before 2002), Ethiopia, Chad and Swaziland more than half the experts surveyed said that the electoral authority is rarely or never impartial and transparent in its activities or is controlled and used by the incumbent government (figure 6.7).

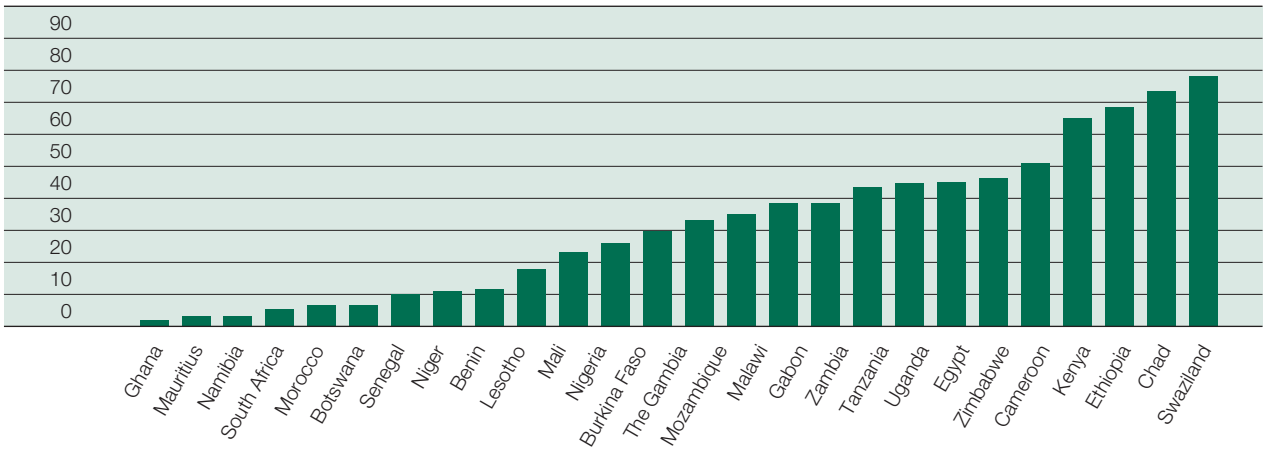
Box 6.3 Police reforms in Botswana enhance protection of human rights

The Botswana police service is more accessible to the people now than ever following fundamental reforms carried out to enhance its effectiveness and outreach:

- Changing its name from the Botswana Police Force to the Botswana Police Service.
- Changing the name of police stations from "Charge Offices" to Community Service Centres.
- Using such institutional effectiveness techniques as organisation and management review, work improvement teams and performance management systems to manage the service.
- Creating the position of performance improvement coordinator to be held by a senior police officer at the rank of senior assistant commissioner of police.
- Defining a mission statement for the police service which includes providing quality service, reducing incidence and fear of crime, promoting peace, safety and security and partnering with the community.

Source: Botswana country report

Figure 6.7 Expert opinion that electoral authority is rarely or never impartial and transparent
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

The most significant violations of human rights in Africa tend to be related to the exercise of political rights, especially dissent and freedom of association

The most significant violations of human rights in Africa tend to be related to the exercise of political rights, especially dissent and freedom of association. Criticism of government actions and policies is often seen as a challenge to existing authority. Open disagreement with government on key issues of governance is perceived as unpatriotic and is often violently suppressed. According to the national country report of Mali, the most significant violations of fundamental rights by government agencies include unlawful imprisonment and denial of access to lawyers. In some countries, the government continues to use military courts, repressive laws and arbitrary arrests and prosecutions to restrict political freedom.

When a country enacts a state of emergency, it may allow suspects and their families and acquaintances to be arrested on suspicion of security or political offences and held in a prolonged pretrial detention. Furthermore, the prosecution of the war on terror has lead many African countries to enact anti-terrorism laws. While this is commendable as the struggle against terrorism requires a collective global effort, to some, it has provided a further basis to hound political opponents and limit civil liberties. All the government needs to do is to brand an opposition group or member as a terrorist organisation or individual in order to detain, torture or carry out extrajudicial killings.

Political dissenters continue to be arrested in several African countries despite the constitutional freedom to form political parties. Human rights organisations remain one of the most dynamic segments of civil society in Africa, but their work is constantly hounded by government security agencies.

In many African countries constitutional provisions for the protection of political and civil rights and liberties are adequate, but governments regularly violate them. In these cases governments do not demonstrate the will and resolve to respect those

rights and liberties. Cases of extra-judicial killings and the disruption of political rallies have been reported in several countries. In some countries survey respondents unanimously said that the legal system is not effective to protect human and political rights and that the legal system does not protect the rights and liberties of citizens equally. A comparable number of respondents also said that violence against women is only sometimes acted upon promptly (as discussed later).

Economic, social and cultural rights

Consistent with the trends elsewhere, little attention has been paid to economic, social and cultural rights. This is perhaps one area where there is still some debate about the relevance of human rights. However, in some countries expression is being given to cultural and social rights. In South Africa, for example, the constitution promotes and protects the rights of cultural, religious and linguistic communities. Thus, there are about 11 local languages recognised by the South African constitution, which may be used in official functions. In Ethiopia cultural and linguistic rights are conferred on the federating units, the regional states, based on the principle of "ethnic federalism" practised by the country.

In terms of social rights, the rights of marginalised groups such as children and disabled people are increasingly being recognised and provided for. The Ugandan constitution makes provision for the representation of disabled persons in the parliament. In Egypt the government is also trying to address the problem and rights of disabled people (box 6.4).

In the areas of economic and material social rights, many African countries have made the right to employment, education, health services, housing, food and the like non-justiciable, listing them as directive principles of state policy, which are rights the government will strive to achieve based on resource availability. But these rights cannot be enforced, and the government cannot be sued if they are not realised, making them non-binding rights.

In the areas of economic and material social rights, many African countries have made the right to employment, education, health services, housing, food and the like non-justiciable and subject to resource availability

Equal access to justice

In virtually every African country access to justice in a quick and efficient manner is problematic. The court system is slow and expensive, and access to it is often determined by the social status of the person involved. In Kenya the average waiting time to get justice in court is three years. In Mauritius criminal cases in district and

Box 6.4 Egypt makes significant efforts in empowering disabled people

In Egypt there are approximately 5.7 million disabled people—1.5 million of them severely disabled. By law all businesses must reserve 5% of their jobs for disabled people, who are exempt from normal literacy requirements. Although there is no legislation mandating access to public accommodations and transportation, disabled people may ride government-owned mass transit buses free of charge, are given priority in obtaining telephones and receive a reduction on custom duties for private vehicles. Several nongovernmental organisations are active in efforts to train and assist disabled people, as well.

Source: U.S. Department of State 2001

intermediate courts usually take one year to come to court for trial for the first time and two to three years to go through trial; supreme court cases usually take three to four years to come up for trial. In Nigeria access to justice is notoriously hampered by delays in trials in the law courts, with an average waiting time of five years for cases to be brought to trial, especially in criminal cases.

The courts are also often described as unaffordable and inaccessible to most people. Many of the experts surveyed said that the lower courts can always, usually or sometimes be accessed within three days in Namibia, Malawi and Gabon, but not in Niger and Mozambique (figure 6.8). Across project countries, 58% of the experts reported that the courts can always or usually be accessed, while 42% said only sometimes.

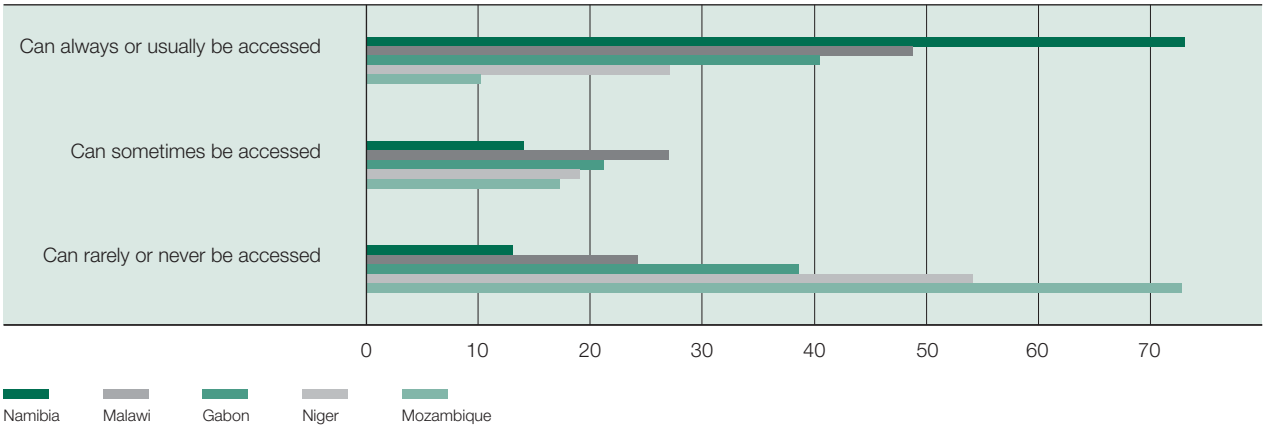
In 11 of 27 countries more than 50% of the experts surveyed said that citizens can always or generally obtain full access to justice irrespective of their economic or social status

Legal aid programmes that are supposed to provide affordable legal services to poor people and free services to those who cannot pay are mostly underfunded, poorly staffed and, in some cases, riddled with corruption. Ghana, Nigeria, Senegal, Tanzania and Zambia have legal aid schemes established by the state, but they are largely ineffective and do not provide the required assistance to poor people in need of legal services.

In Zambia limited access to justice is due to the ineffectiveness and poor capacity of the Office of the Director of Public Prosecutions, which is underfunded and understaffed and lacks suitable accommodation, including modern office equipment and information technology. It cannot keep up with its caseload, resulting in long delays in prosecuting alleged offenders. The office sometimes has to rely on the magistrate courts and police prosecutors, many of whom are not trained lawyers, to prosecute its cases, a situation that undermines the quality of services.

There are differences among countries on how social status affects access to and dispensation of justice. In 11 of 27 countries more than 50% of the experts surveyed

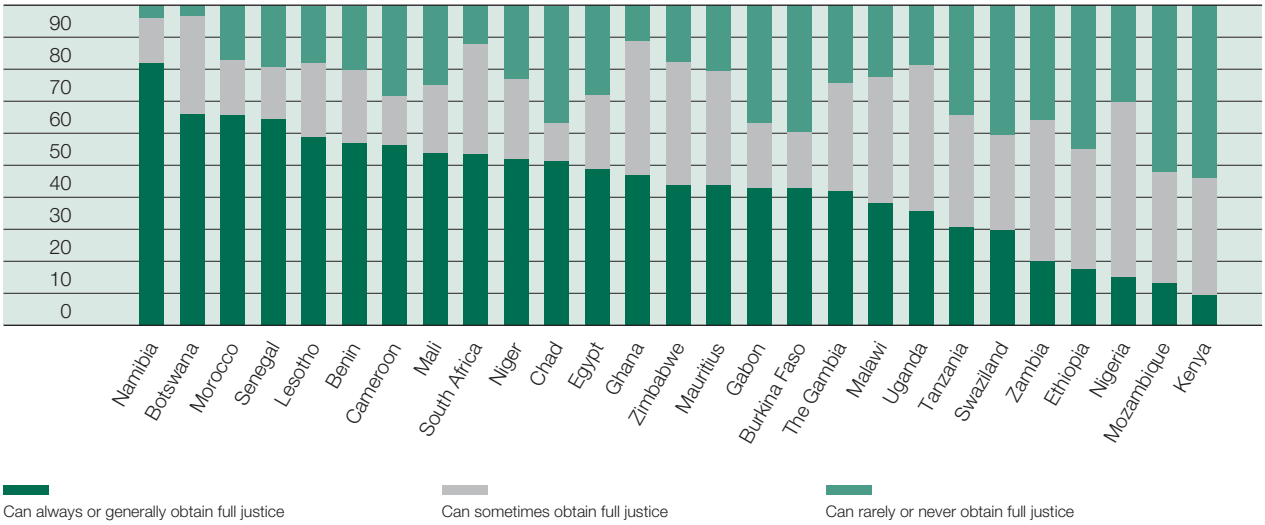
Figure 6.8 Expert opinion on citizen access to first instance or lower courts within three days in Namibia, Malawi, Gabon, Niger and Mozambique
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Figure 6.9 Expert opinion on citizen access to justice in court irrespective of economic or social status

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

said that citizens can always or generally obtain full access to justice irrespective of their economic or social status (figure 6.9). But in Kenya and Mozambique more than a half of the experts surveyed said that citizens can rarely or never obtain full access to justice irrespective of their economic or social status.

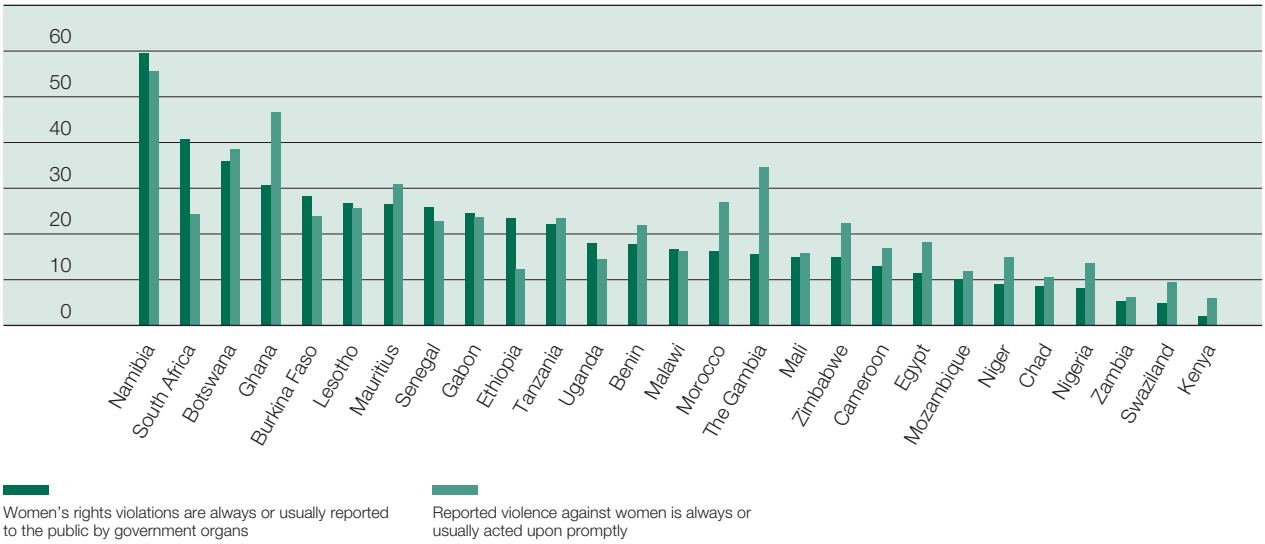
Gender equality and women's rights

As discussed in previous chapters, most African countries agree that much remains to be done to improve the status of women. The level of discrimination against women in African countries remains disappointingly high. And violations of women's rights are rarely acted upon, if they are reported at all (figure 6.10). The problem is most pronounced in Egypt, Kenya, Nigeria and Swaziland where the majority of the experts surveyed said that women's rights violations are always or usually not reported to the public or acted upon promptly. Almost all African constitutions prohibit discrimination based on gender, and some, such as Senegal's, go further to ensure that women can own land, receive a personal inheritance, manage their own property, have improved living conditions (particularly in rural areas), freely consent to or refuse marriage and fully exercise their civic rights. Observance of these constitutional rights remains a major problem, however.

The level of discrimination against women in African countries remains disappointingly high with violations of their rights rarely acted upon, if they are reported at all

There are no legislative barriers to women participating in the economy, but discrimination of women in many parts of African societies can only be discerned by carefully examining the production process, ownership of the means of production and exchange and distribution of the products of labour. Men have almost total control of economic resources. A 1997 comprehensive report on the status of women in

Figure 6.10 Expert opinion on the reporting and action taken against women's rights violations
Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

Malawi found that women are frequently expected to give sexual favours to keep their jobs, that rape and other sexual offences are common and that women are often the victims of domestic violence (Mvula, Kakhongwe and Cammack 1997). In many African countries women are victims of rape, murder, domestic violence and other forms of human rights abuses.

Many constitutions declare sex discrimination illegal, but allow an exception for matters relating to customary law

Generally, women who are discriminated against based on their gender can initiate a court action or a complaint before a human rights commission. In some countries specific institutions have been created to deal with gender issues and rights of women. For example, in South Africa the Office of the Status of Women in the Office of the President has the mandate to coordinate gender units in each government department. But many of these offices have struggled to obtain government support for their work, and as a result, their profile and advocacy roles are weak.

In most African countries gender rights are the responsibility of the human rights commission. In South Africa the Commission for Gender Equality was created to protect and promote gender rights and gender equality and has the power, as regulated by national legislation, to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. The South Africa country report found that the commission has given women an effective agency to promote their rights.

In some countries the national country reports found evidence of the trafficking of women and girls in prostitution to other African countries and to Europe. These women's rights violations are generally not well reported except for high profile cases. And when it comes to taking action against women's rights violations, a similar pattern emerges.

A myriad of traditions, practises and social norms also deny women their statutory and constitutional entitlements. Often a legal framework exists to provide protection to women, and in most cases this legal framework has been increasingly responsive to the experiences of women. But there is need to pay significant attention to improving compliance.

Many constitutions declare sex discrimination illegal, but allow an exception for matters relating to customary law. This sort of arrangement does not send a clear and consistent message on the importance of gender equality and serves only to perpetuate gender discrimination. The Namibian constitution has a commendable approach, explicitly stating that customary law may not entail any form of sex discrimination. The Ugandan constitution also states that laws, cultures, customs or traditions that are against the dignity, welfare or interest of women, or that undermine their status, are prohibited.

South Africa's committee has also worked with civil society to develop the women's budget initiative, which since 1995 has sought to address obstacles to equitable socio-economic development

At the parliamentary level in Mali and South Africa a standing committee on the quality of life and status of women has done important work in promoting the passage of legislation and influencing policy to improve women's lives. South Africa's committee has also worked with civil society to develop the women's budget initiative, which since 1995 has sought to address three obstacles to equitable socio-economic development: poverty and gender, the policy-budgeting link and budgetary and advocacy skills.

Institutional mechanisms for safeguarding and enforcing human rights

National human rights enforcement mechanisms

Effective domestic protection of human rights requires a network of complementary norms and mechanisms, including:

- State adherence to human rights treaties.
- Implementation of international human rights obligations in domestic law. Substantive and procedural human rights laws at the domestic level.
- Effective and accessible state institutions where individuals can obtain redress for human rights breaches.
- A lively human rights nongovernmental organisation community.
- A population that has developed a strong human rights culture.

Traditionally, the judiciary, in view of the constitution and the nature of its functions, is the main government agency called upon to protect human rights and advance rule of law, accountability and transparency in government. It has two basic instruments for preventing or punishing the violation of the liberty of an individual: habeas corpus and sanctions for guilty parties. These instruments are critical in a preventive sense and are used worldwide to advance the cause of human rights and rule of law. But many jurisdictions have realised that protecting human rights and promoting accountability in governance and rule of law cannot be left to the courts alone but must also involve other democratic institutions designed specifically to provide such protection.

As discussed in chapter 4, watchdog institutions that oversee the executive include human rights commissions, public protectors, auditors general, inspector generals, ombudsmen, electoral commissions and anticorruption commissions. They typically have several functions: to promote adherence to rule of law and principles of natural justice in administration, to eliminate corruption and abuses of authority and public office, to promote fair, efficient and good governance in public offices and to promote constitutionalism and accountability in governance.

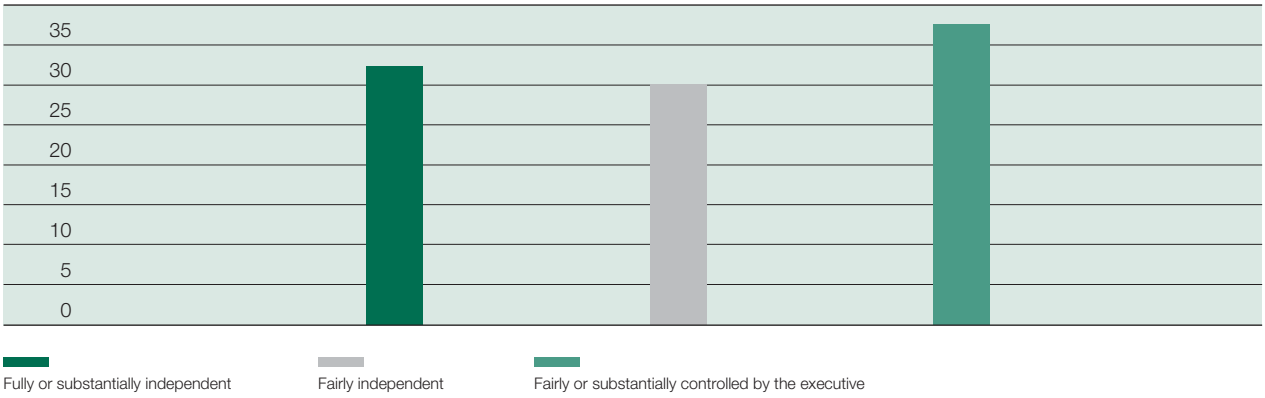
A central factor in the effective operation of watchdog institutions is their independence from other branches of government, especially the executive

A central factor in the effective operation of watchdog institutions is their independence from other branches of government, especially the executive. The independence of an institution depends on such matters as appointment procedures and protection of tenure and promotion procedures for appointees. An average of 37% of the experts surveyed across all the project countries said that watchdog institutions are fairly or substantially controlled by the executive branch of government (figure 6.11). This control is reinforced by watchdog institutions' financial dependence on the executive.

Furthermore, according to the country reports, merit is often relegated to a secondary position in the appointment of the watchdog organisation officers, while ethnicity and personal loyalty to the appointing authority are given premium, which may undermine effectiveness. In practise, most African states provide for executive involvement in the appointment process. The appointment of the inspector general in Uganda and the commissioners of the Permanent Commission of Enquiry in Tanzania remain the sole responsibility of the head of state, and in Namibia, Zambia and Zimbabwe the president is required only to consult with or to act on the recommendations of the Judicial Service Commission (Hatchard 1998). An All Party Public Institution Appointments Committee appoints the Malawian ombudsman.

Figure 6.11 Expert opinion on the independence of the operations of public complaints and watchdog organisations from the executive

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

The preference for executive involvement in the appointment of officers of watchdog institutions is surprising when compared with the recommendations of the Paris Principles that the appointment procedure should involve the "pluralistic representation of the social forces involved in the protection of and promotion of human rights including representatives of non-governmental organisations, universities as well as Parliament" (UN General Assembly 1993). This is particularly important as nongovernmental organisations play an increasingly vital role in protecting and promoting human rights. However, in countries like Malawi and South Africa the law does provide for the involvement of civil society in the appointment process.

Some countries have established legislative committees, usually comprising members of parliament, as an additional national mechanism to promote rule of law and protect human rights. In Kenya the Government's Standing Committee on Human Rights, created in 1996, examined prison conditions and found widespread abuse of prisoner rights, including the murder of six death row inmates by prison wardens in 2001. It then put pressure on the government to effect prison and police reform, condemning the torture and recommending that police officers receive compulsory human rights training. The committee also investigated police officers for a pattern of shooting unarmed civilians and subsequent coverups. In Mali the National Assembly—rather than a legislative committee—exercises the surveillance functions. It can set up special inquiry commissions that collect information and report back to the members of parliament who can debate the report and pass a resolution addressed to the government.

Among the matters parliamentary committees may monitor are the effectiveness of human rights commissions and other watchdog organisations that protect and promote human rights

Integral to the parliamentary process in South Africa is the system of parliamentary committees, which have extensive legislative powers to advance the protection of human rights and rule of law, including the ability to monitor, investigate and inquire into programmes, budgets, organisational structure, policies or anything else relevant to government departments. Among the matters the parliamentary committee can monitor are the effectiveness of human rights commissions and other watchdog organisations that protect and promote human rights.

The problem with parliamentary-based oversight committees is that they tend to be ad hoc and are better suited to investigating situations than to investigating individual complaints. Also, their membership may vary more than a regular human rights commission.

The role of civil society organisations

Efforts have been made to tighten regulatory regimes on nongovernmental organisations and restrict their operation in several African countries, including Ethiopia, Uganda and Zambia. For example, in Uganda until recently nongovernmental organisations operated generally quite freely and were outspoken in their critique of the government's human rights practises, but a new law, the Non Governmental Organizations Registration (amendment) Act, requires them to obtain a special permit from the registration board before they can operate. The law empowers the registration board to reject or revoke a group's registration and imposes punishments for operating without official approval, potentially criminalising legitimate nongovernmental organisation activities.

The space given to civil society organisations to operate varies across countries. Often development or humanitarian-oriented organisations are far more accepted than those venturing into advocacy on sensitive issues. In Ghana and Namibia civil society is largely encouraged to function independently of the state and the ruling party and to grow into alternative centres of discourse and empowerment; in Benin, Mali, Mauritius and Nigeria civil society is allowed to function independently of the state but not encouraged to grow into alternative centres of popular empowerment; and in Swaziland and Uganda civil society is considered to be subject to the power of the state.

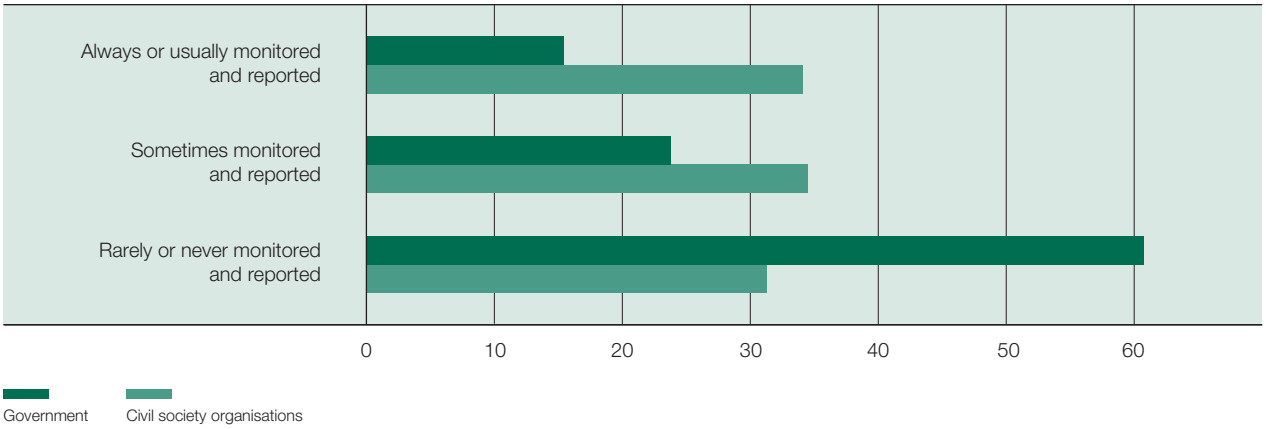
Civil society and the media are broadly perceived as helping to promote accountability on human rights and good governance in many countries

According to the national country reports, in some countries nongovernmental organisations said that they feel compelled to practise a significant amount of self-censorship to avoid confrontation with the government. This is an unfortunate trend as nongovernmental organisations are expected to contribute effectively to the promotion of accountability and transparency in government in Africa. The contribution of civil society is a crucial part of establishing and maintaining a good culture of human rights and respect for rule of law.

Civil society and the media are broadly perceived as helping to promote accountability on human rights and good governance in many countries. Civil society is often considered to be more independent than official agencies to monitor human rights violations. The results of the expert survey show that civil society organisations are generally better at monitoring and reporting human rights violations by the police and prisons. More than 30% of the experts indicated that civil society organisations always or usually monitor and report human rights violations by the police and prisons compared with 15% who said that government agencies do (figure 6.12).

Figure 6.12 Expert opinion on the reporting and monitoring by government and civil society of human rights violations by the police and in prisons

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

However, civil society groups' lack of information gathering, weak analytical capacities and a scarce resource base hamper their effectiveness. As a result most civil society activities are concentrated in urban areas and have little impact in rural areas. Fragmentation in civil society also inhibits the sharing of expertise and information. Inadequate funding and other types of resource deprivation undermine the effectiveness of most governance agencies, including constitutionally independent ones.

Human rights commissions

An average of 55% of experts said that human rights violations are rarely or never reported to the public by government organs, while only about 18% said that violations are always or usually reported

Africa has seen a rapid increase in the establishment of human rights commissions, including gender commissions (Reif 2000). Nearly 30 African countries have made provisions in their laws to establish a national human rights commission of some sort (Human Rights Watch 2001 and see also table 4.2 for study countries). Human rights commissions serve as another check on the conduct of the state. Typically they are charged with hearing complaints of violations of laws; promoting a culture of respect for rights; protection, monitoring, development and attainment of human rights; and securing appropriate redress when human rights are violated. In established democracies national human rights institutions usually exercise their functions as part of a wider network of domestic machinery, including courts and specialised tribunals.

In Malawi, for instance, the Human Rights Commission ensures that human rights are upheld in practise throughout the country. The Malawi constitution grants the commission "such powers of investigation and recommendation as are reasonably necessary for the effective promotion of human rights". In Uganda the Human Rights Commission is charged with investigating at its own initiative or on a complaint the violation of any human right, visiting prisons and places of detention to assess the conditions of inmates, recommending to parliament effective measures to promote human rights, including the provision of compensation to victims of violations of human rights, monitoring government compliance with international treaty and convention obligations on human rights and researching and establishing an education and information programme to enhance respect for human rights and educate the public about human rights.

When asked whether human rights violations are being reported to the public by government organs, experts surveyed across all the project countries were unanimous that much more needs to be done. An average of 55% said that human rights violations are rarely or never reported to the public by government organs. And only about 18% said that violations are always or usually reported. As a result, little or no action is taken in many countries against human rights violations because what is unknown cannot be investigated or punished.

Effectiveness of the judiciary

The judiciary is one of the key parameters for assessing the effectiveness of rule of law in a country. Governments are increasingly respecting court decisions, and individuals are prepared to use the law to challenge and enforce their rights, but many country reports found that judicial capacity to protect human rights is still very weak.

In many African countries the judicial system is slow and expensive, and it lacks basic infrastructure and operational materials such as courtrooms, vehicles, computers, and writing and recording materials. It is also hampered by poor funding and conditions of service. In addition, in some jurisdictions the judiciary is seen as controlled by the executive, difficult to access and slow in processing cases. Even Botswana, where the judiciary is well respected with relative independence, has these problems. Courts there are overburdened, with a prolonged pretrial waiting period.

In many African countries the judicial system is slow and expensive, and it lacks basic infrastructure and operational materials

Because the judicial system in Mali is slow and detainees often spend several years awaiting trial, they are occasionally released or acquitted at the end of their trial because their detention period was longer than the maximum jail time for their offence. Cases of preventive detention for simple offences can last one to five years. Clearly, there is need to ensure that the judicial process is well facilitated in order to ensure prompt and adequate dispensation of justice.

With regard to the independence of the judiciary, several countries have strived to maintain an autonomous judicial system. In South Africa, for example, the courts have demonstrated a fair degree of resilience and independence that have guaranteed the effectiveness of rule of law. Some 75% of the experts surveyed across all the project countries said that judges are sometimes or usually appointed and promoted on merit, which reinforces the level of independence of the judiciary in those countries. Only in Burkina Faso, Chad, Ethiopia, Kenya and Swaziland did a majority of respondents say that the appointments in the judiciary are rarely based on merit.

In spite of efforts to maintain the independence of the judicial system, there are still problems of corruption. More than half of the households surveyed in Chad, Uganda, Kenya, Tanzania, Zimbabwe and Benin expected both public prosecutors and judges to demand bribes for services rendered (figure 6.13). Across all the project countries an average of about 40% of households surveyed reported the same.

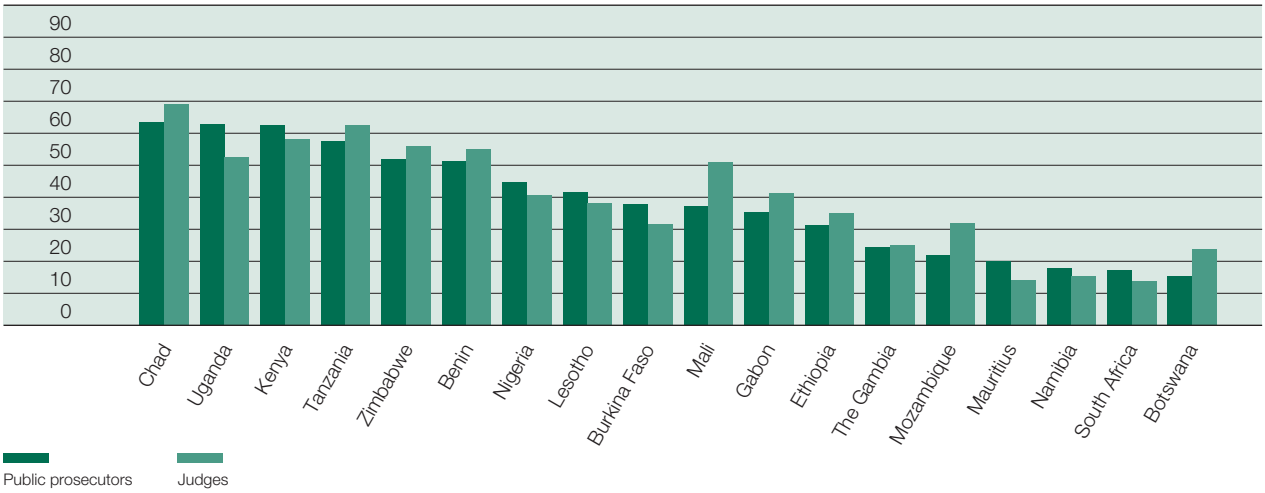
Monitoring of human rights

In contrast with the generally positive record of ratifications of human rights, African countries are lax in fulfilling their obligations at implementing human rights treaties. The failure to operationalize national human rights institutions and integrate human rights in national legal frameworks and policies is serious, as well as the failure to report human rights violations and to cooperate with human rights monitoring institutions. In fact, on average across project countries, 42% of experts felt that governments are rarely ef icient or not efficient at all in reporting human rights abuses, while only some 16% believed they are always or usually efficient in doing so. For example, the record of reporting to the UN human rights mechanisms is abysmal. African countries also tend to shy away from cooperating with UN human rights rapporteurs, experts and other mechanisms important for realising human rights at the national level.

The situation is even worse with respect to the continental human rights mechanisms. In its 20-year existence the African Commission on Human and Peoples'

Figure 6.13 Household opinion that public prosecutors and judges are expected to demand bribes

Share of households surveyed, by country (%)



Source: ECA governance survey of households

Rights has received only a small fraction of reports on the human rights situation in member states.

Concluding remarks

The failure to operationalize national human rights institutions and integrate human rights in national legal framework and policies is serious

The significance of human rights in achieving good governance, sustainable development and peace and security and in addressing socioeconomic challenges cannot be overemphasised. African leaders have recognised and acknowledged this reality in the various initiatives and declarations discussed in this chapter. The challenge is to create the necessary conditions to sustain and improve some of the important progress and accomplishments reported in the surveys and analyses and to ensure the necessary reforms in areas where little has been done.

Given the range of challenges, a strategy to improve the human rights situation in Africa requires a multifaceted approach. One of the greatest threats to human rights in Africa remains the extent to which the rights are clouded by uncertainty and turbulence. Conflicts raging in many parts of Africa are the source of much of that. One of the most important overarching actions therefore is to support and consolidate the trend towards peace, stability and democratisation at the country level.

As an accountability mechanism, a national human rights institution will find it extremely difficult to function in a country that lacks a democratic system of checks on the exercise of power, where real independence from the ruling power is not possible and where human rights are not respected in law or practise. By contrast, democratic governance in a state deepens and matures as national human rights institutions established within the state are strengthened and functional. There is

clearly a need to make the mechanisms for addressing human rights abuses more effective.

On the positive side are the goodwill and consensus by African governments and leaders to take responsibility for remedying what they acknowledge is a dire situation. A strong foundation has been laid over the last few years, both at the country and regional levels. At the regional level the emphasis on good governance, rule of law and human rights, among other values, in the Constitutive Act of the AU and in NEPAD, particularly the APRM, establish a positive framework for concerted efforts to improve the human rights situation and institutionalise rule of law in Africa. Strides in several countries in establishing transparent, accountable and democratic processes and institutions are indeed welcome and will need to be supported and replicated.

Nongovernmental organisations should work with courts and human rights commissions and other watchdog institutions to develop literacy and human rights awareness programmes for youth and vulnerable groups in society

Building awareness of rights

Steps must be taken to ensure that the requirements of human rights laws are widely known and applied. One way of dealing with the lack of knowledge by those whose rights are violated is to ensure that nongovernmental organisations work hand-in-hand with courts and human rights commissions and other watchdog institutions to develop literacy and human rights awareness programmes for youth and vulnerable groups in society. Senegal, for example, has supervised human rights sensitisation programmes located in social rehabilitation centres that target young and poor people.

Gender representation in all structures of government is improving in Africa, with the appointment of more women, but sensitisation to issues that undermine gender equality is needed for the largely patriarchal society. Furthermore, it is important to ensure that national legal systems provide accessible and gender-sensitive redress for women and that national institutions respond to the needs, concerns and experiences of women, including special measures for victim and witness protection, especially of sexual crimes and violence. There is also need to deal with the aspects of custom and customary law that undermine women's rights.

African governments should also develop mechanisms that facilitate accessibility to oversight bodies. This is made difficult by a shortage of staff and resources, but national institutions to improve accessibility can use several useful strategies. One is to carry out regular nationwide tours to help create greater awareness in the general population of the existence of institutions and to foster positive links with local officials. Similarly, advertising campaigns and media coverage of activities of the human rights commission provide a higher public profile for the institution.

Fostering a culture of protection

Specific actions include the need to foster a culture of protection of fundamental human rights by conducting formal courses and workshops for magistrates, prosecutors, the police, court interpreters and all others involved in law enforcement on fundamental rights, as have been undertaken by Namibia's Ministry of Justice. More efficient surveillance of the human rights record of police conduct is needed as well as an efficient punishment system for misconduct. In many countries human rights violations by the police are rarely punished either by the police or the government.

The police service and other law enforcement agencies must also be well remunerated because when they are poorly paid and trained, they are more prone to corruption and to unfriendliness towards the citizenry.

Prison reforms are also needed in many African countries to alleviate overcrowding and to protect inmates' rights to adequate food, quality medical care and good sanitation. This is necessary for prisons to be corrective institutions.

One of the indications of the seriousness or commitment of a state to people's respect for human rights is how many mechanisms for human rights enforcement exist. This assistance is, however, restricted by the fact that there are no objective criteria for deciding who falls into this category and by a lack of information for those subject to litigation. There is also a need to disseminate information about the procedures for redress to the public as widely as possible.

Governments have an obligation to provide their human rights commissions with the necessary financial resources to perform their functions

Building and supporting strong, independent institutions

Sometimes institutional gaps and lack of capacity prove to be major obstacles to the development of good governance. Government agencies and departments suffer from not only lack of adequate budgets, but administrative logjams, unclear policies, sometimes incompetent and corrupt officials and defects in the conception of institutional needs.

More efforts are needed to create and support the institutions that enhance democracy as well as human rights. The national country reports underscore the importance of courts, and their autonomy and independence needs to be safeguarded. A regional dialogue on the role of courts in supporting democracy and human rights would also be a good idea—to take stock of good practises and provide a forum to protect the independence of judges.

With few exceptions, the situation of financing is described as unsatisfactory in most countries. Governments have an obligation to provide their human rights commissions with the necessary financial resources to perform their functions. A strong indicator of a government's commitment to its machinery is the resources available to carry out its work. National institutions must enjoy operational independence through the provisions of adequate and secure funding so as to maintain appropriate staffing levels, infrastructure and resources. Another structured approach is to decentralise some offices.

At the regional level, the AU has made important progress establishing such institutions as the African Court on Human and Peoples' Rights, Pan-African Parliament and Economic and Social Council (ECOSOC). These institutions must continue to receive support. The AU's commission also needs much more support to institutionalise its human rights and democracy activities. The African Commission on Human and Peoples' Rights has so far lacked the required political attention and its reports have rarely generated any substantive debates at the head of state level. The commission also does not have adequate human, material or financial resources to fully respond to the numerous human rights challenges in a growing number of countries on the continent.

Note

1 The protocol establishing the African Court on Human and Peoples' Rights entered into force 25 January 2004.

References

Hatchard, J., 1998. *National Human Rights Institutions in the Commonwealth: Directory.* 3rd ed. London: Commonwealth Secretariat.

Human Rights Watch, 2001. "Protectors or Pretenders? Government Human Rights Commissions in Africa." New York.

Mvula, P., P. Kakhongwe and D. Cammack, 1997. "Beyond Inequalities: Women in Malawi." Southern African Research and Documentation Centre, the University of Malawi Centre for Social Research.

NEPAD (New Partnership for Africa's Development), 2002. "Declaration on Democracy, Political, Economic and Corporate Governance." Adopted by the 38th Ordinary Session of the Assembly of Heads of State and Government. July 8, Durban.

Reif, L. C., 2000. "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection." *Harvard Human Rights Journal* 13: 1–70.

UN General Assembly, 1966a. "International Covenant on Civil and Political Rights." G.A. Res. 2200A (XXI). A/6316.

———, 1966b. "International Covenant on Economic, Social and Cultural Rights." G.A. Res. 2200A (XXI). A/6316.

———, 1993. "National Institutions for the Promotion and Protection of Human Rights." G.A. Res. 134. UN G.A., 48th sess., A/RES/48/134.

U.S. Department of State, 2001. "Country Reports on Human Rights Practices 2000: Egypt." Bureau of Democracy, Human Rights and Labor, Washington, D.C. [www.state.gov/g/drl/rls/hrrpt/2000/nea/784.htm]

Institutional capacity building for good governance

7

Capacity has been identified as one of the missing links in Africa's development and democratisation. In the context of governance, capacity entails the ability of an institution of governance—the legislature, executive, judiciary, civil society or the private sector—to perform its constitutionally or politically mandated functions or roles efficiently and effectively.

Capacity issues are being taken very seriously by African leaders as well as Africa's development partners, but the crucial and practical question is: capacity for what? Capacity in the context of Africa is about capacity for development: capacity to promote democratic governance, to improve the structures and institutions of economic policymaking, to invigorate the strength of civil society to contribute to national development and to create an environment of social empowerment for the people where they can meaningfully contribute to decisions that affect their life and the development process.

This entails the availability of the human, material and financial resources essential for efficiently managing the institution and the identification and recruitment of personnel with the required knowledge, expertise, experience, competence and leadership to manage the institution. Essentially, it is about unbundling the creative energies of the people, improving those energies and providing the legal, institutional and material context in which those energies will flourish.

Capacity and capacity building are critical for promoting good governance in Africa. Good governance is a major factor in creating an environment of peace, stability and security in which people can pursue various productive and creative activities, creating wealth and employment and thus promoting human development and alleviating poverty. But good governance is a product of deliberate policies. It requires all the institutions of governance to function in accordance with a country's constitutional provisions of the rule of law, due process of law, cultures and traditions. And in order for the institutions of governance to perform their functions efficiently and effectively they must be endowed with the appropriate capacities. Good governance is a development issue with capacity-building ramifications.

This chapter focuses on the issue of institutional capacity building within a governance context in Africa. It reviews the capacity deficits in Africa, identifies the capacity gaps in institutions and sectors of governance and provides recommendations for filling those capacity gaps based on the experiences and suggestions from the national country reports.

Good governance is a product of deliberate policies, which require all institutions to function in accordance with a country's constitutional provisions of the rule of law, due process of law, cultures and traditions

Background and challenges to capacity deficits

Capacity and capacity building have been critical issues in Africa since independence. The colonial regime bequeathed to most African states weak and ineffective institutions that tended to serve the interest of a minority group—the colonialists and the small African urban elite—rather than the entire population. In many African countries there was a rapid expansion of education, social infrastructure and training, supplemented by foreign aid, advice and expertise in improving technical capacities in selected ministries. With the help of external expertise many African countries designed development plans and embarked on indigenisation policies both at the level of the civil service and the economy and adopted an import-substitution strategy for industrialisation.

The emergence of military dictatorships in many African countries had an extremely damaging impact on the capacity of governance institutions in Africa

Most development policies did not have a large impact on capacity building because they were mainly externally dependent and oriented. And the highly centralised strategy of development stifled capacity rather than bolstering it. In pursuit of nation building and economic development the first generation of African leaders considered centralisation of political power and authority, the control of material resources and the mobilisation of people the most critical factors. Nation building entailed harmonizing diverse ethnic, cultural, racial, religious and traditional groups into one meaningful nation. At the economic level, this entailed top-bottom authoritarian economic policies that neither reflected the wishes of the people nor empowered them.

At the political level the logic of power centralisation, among other factors, led to the consolidation of power by the political party and the leadership. In the process the political party in power controlled and manipulated the legislature to ensure that it responded to the wishes of the party leadership, incrementally undermining its independence and capacity to function as an independent institution of governance. In the process of mobilising the people, authoritarian regimes undermined and destroyed the growth and development of independently organised political groups, incipient opposition parties, and other critics in the civil society. The regimes attempted to co-opt existing fledgling civil society organisations, marginalised those not cooperating and destroyed those that appeared to be hostile or opposed to the regimes. The overall consequences were that institutional capacity building was neglected, and the residual but weak institutional capacity bequeathed by the colonial rulers was further undermined and in some instances, such as the legislatures, allowed to decay.

The emergence of military dictatorships in many African countries had an extremely damaging impact on the capacity of governance institutions in Africa. By implication, the military is anti–good governance. In its excessive preoccupation with security and control, it restricted the political process, marginalised civil society organisations, suspended existing constitutions that were the basic foundations of good governance and democracy, banned political parties, undermined the judiciary, threatened the media, stifled private sector initiative and created an atmosphere of fear and submission.

In the 1980s and 1990s the structural adjustment programmes initiated by the Bretton Woods institutions and supported by the international development and

donor communities drastically undermined the capacities of many public institutions throughout the continent, including those in the health, education and civil service sectors and various state-owned enterprises. Minimal government proposed and insisted on by the international development institutions implied retrenchment of civil servants and diminution of the capacities of the public institutions to perform their functions efficiently and effectively. While liberalising the economy offered much potential for empowering citizens to participate in it, it was done at the expense of countries' institutional capacity to produce and deliver essential public goods and services in the health and education sectors. No measures were taken to strengthen the capacity of existing institutions, nor was serious thought given to the possible consequences of the policies on the major entities of governance.

Over the last two decades the revolutions in participatory democracy and in promotion of human rights and good governance in Africa, and the consequent emergence of the democratic regimes, have destroyed dictatorial and military regimes and created serious implications and capacity-building challenges for those countries. Case in point: without delivery of the expected public goods and services, a democratic regime may be discredited and ultimately undermined. Although only 23.5% of the experts surveyed across project countries said that the democratic framework has been accepted by all social and political groups as the basis for conducting politics, a much larger 37% felt that they have accepted the democratic framework but are still unsure of its entrenchment in the governance systems of their countries (figure 7.1). Together, these are encouraging trends.

Structural adjustment programmes advocated by the international development institutions implied retrenchment of civil servants and diminution of the capacities of the public institutions to perform their functions efficiently and effectively

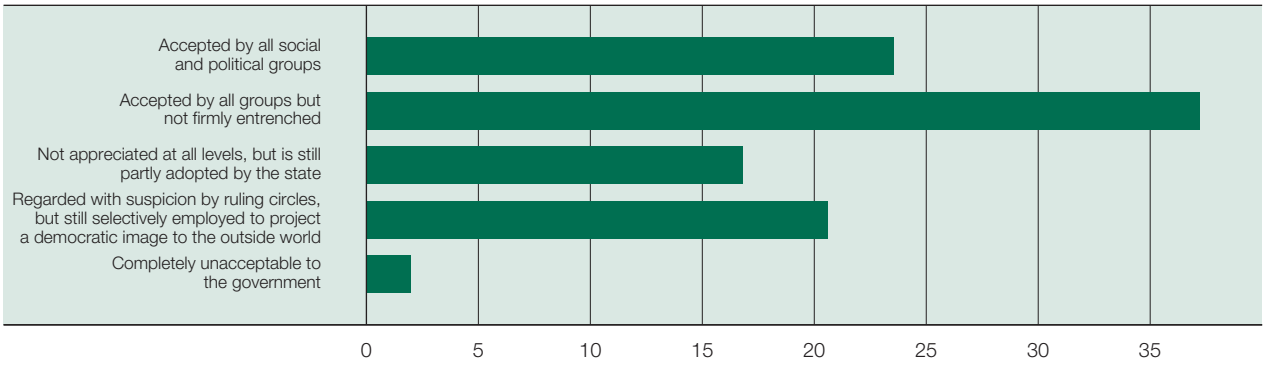
However, addressing the key challenges to capacity building in Africa will require two critical measures. The first is to ensure that the political leadership is aware of the need for continuous institutional capacity building for good governance and sustainable human development. The second is to empower the people so that they, too, are aware of its importance, are vigilant and expose capacity gaps and insist on continuous institutional capacity building.

Context for capacity building

Capacity development is an ongoing process, requiring the unleashing of a continuous supply of the appropriate legal, institutional, human and material resources and a conducive operational environment. The ingredients of capacity and capacity building come from a wide range of sources in society, including the private sector, civil society organisations, schools, universities, think tanks and research institutes. These resources need to be mobilised and efficiently managed to build institutional capacities. In essence capacity building is about people—who have to be trained, adequately equipped, sufficiently remunerated and appropriately disciplined in the efficient use and management of resources.

Plans have to respond to the changes, needs and aspirations of people, and should adapt and adopt scientific and technological changes, new ideas on governance and productivity-related, organizational and managerial principles and experiences as well as relevant best practices. Means and incentives must be found to stem the

Figure 7.1 Expert opinion on the acceptance of the democratic framework
Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

brain drain and create conditions that inspire patriotism and commitment among successive generations of Africans. What is needed is the creation of an environment that would facilitate and promote the preservation of Africa's own intellectual resources, skills, talents and experiences and attract people who have left their home countries.

The environment in which capacity building takes place is very important as it requires peace and stability and an open and free political atmosphere

However, there are internal and environmental constraints that may inhibit the capacity of an institution. In the internal context, for example, legislators may be perceived to be honourable, with competence and integrity, but because of other factors—lack of adequate infrastructure, supportive staff or funding and the like—the legislature as a whole may be perceived to be inefficient and lacking the capacity to perform its functions. Conversely, the legislature may have the necessary infrastructure and resources, but legislators who are perceived to be corrupt, inefficient and incompetent undermine the integrity of the institution and its effectiveness. Capacity and capacity building also need to be viewed and evaluated within both the specific institution itself and the environment in which it is located.

The environment in which capacity building takes place is very important. It requires peace and stability and an open and free political atmosphere. Only in this environment would people be free and willing to use their talents, skills and capital for productive and creative activities and in the process create wealth and employment, personal incomes and tax revenue, thereby establishing the basis for the continuous supply of the ingredients for capacity building. Thus, the government must continue to strengthen the democratization process while building the capacity of institutions responsible for supplying essential public goods and services to the people such as education, healthcare and security. Furthermore, African political leaders, ranking civil servants and others in governance positions should be accountable for their commitments and transparent in their performances.

Capacity building also requires a public policy community: major stakeholders—in governance and development projects or in a particular sector—who raise

issues, debate and create public awareness on the sector. Unfortunately, the public policy community is very weak or virtually nonexistent in many African countries, especially those that have only recently emerged from one-party or military rule. Policy formulation continues to be the domain of the leaders of the governing political parties and their chosen confidants, supported by favoured and trusted bureaucrats. And even within these narrow decision-making circles, policies are formulated without much regard to the relevant information or data and without consulting those who are likely to be affected by the policies. Because of donors and international development agencies' assistance in capacity building, funding and technical assistance, they have enormous influence in the formulation of capacity-building policies of many African countries.

There are generally two types of research and human capacity-building facilities available to the various governance actors in African countries:

- National facilities, including those established in government ministries and departments for in-house purposes and managed and led by civil servants, think tanks and research institutes managed and directed by independent researchers and universities directed, coordinated and managed by a community of researchers and scholars.
- Private facilities, including those established by chambers of commerce and industry, trade associations and trade unions.

Although critical to capacity building, the public policy community is very weak or virtually nonexistent in many African countries

There are, however, serious problems with capacity-building facilities in Africa. Research facilities in government ministries or departments are not as efficient or effective as they should be because they are constrained by a lack of appropriate capacity ingredients. They are also likely to suffer from political interference because research objectives are often politically motivated or their results are suppressed if they are politically embarrassing. Productivity-related principles are not always applied or strictly observed, and governance-related principles are invariably ignored or systematically undermined in favour of political expediency. Even where research institutes are supported by the government, as in Kenya, their reports are not taken as serious inputs into public policy processes.

Capacity gaps in state actors

The national country reports identify several capacity deficits in various state and nonstate institutions. These capacity deficits have reduced the effectiveness of these institutions and will continue to do so until adequately addressed with targeted intervention measures. Many of these have been discussed in chapter 4 as well. This is by no means a catalogue or laundry list of the capacity deficits in Africa.

The legislature

In general, many African legislators lack the education, knowledge, information, freedom and independence to perform their constitutionally mandated functions efficiently and effectively. Lack of adequately stocked libraries, electronic equipment,

documentation facilities and professional staff are common capacity gaps in many legislatures in Africa.

The executive in many African countries still largely overpowers the legislature. The machinery of the party often enables ruling parties to control and dominate the legislature, especially when the party has an overwhelming majority in parliament. In addition, the executive may use various methods, including intimidation, financial squeeze and patronage to subdue the legislature. This has eroded the freedom and independence of the legislature in many African countries. For example, as in many countries, in Uganda the parliament cannot undertake certain important financial matters unless the executive introduces a bill or motion. And in The Gambia the legislature relies on the executive to recruit and pay its support staff.

Many legislators lack the education, knowledge, information, freedom and independence to perform effectively

In countries such as The Gambia, Lesotho, Malawi, Mali, Nigeria and Zambia legislators have poor office accommodation or none at all and lack such basic operational items such as computers, Internet access, telephones and fax machines that can facilitate their work and effectiveness. The lack of access to current developments in legislative matters in the world and regular contact with constituencies through modern methods of communication significantly reduces the capacity and performance of these legislatures.

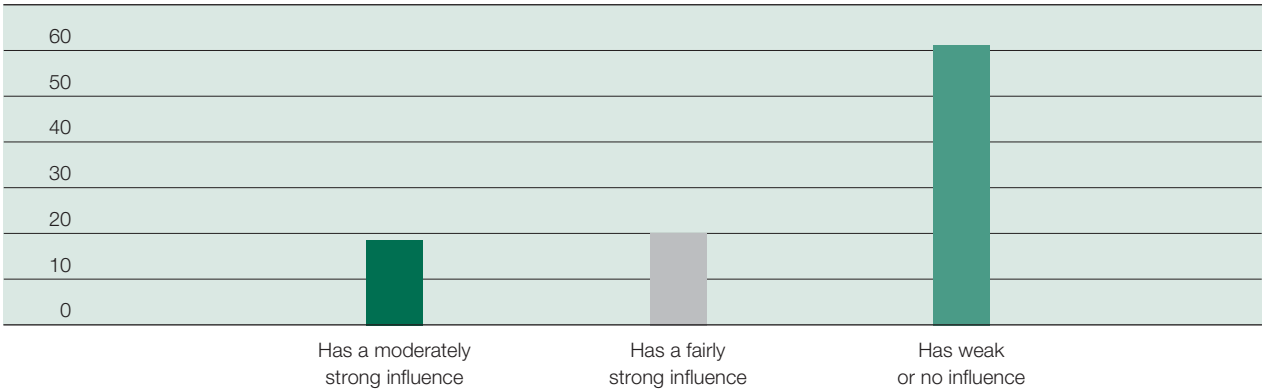
Poor financial resources present a problem for many parliaments as well. For example, in Malawi the parliament only meets for 8–10 weeks a year because of financial constraints. Legislators in many countries can hardly afford to attend conferences and meetings outside their countries without the support of donors or international institutions. Financial problems can stem from a genuine resource squeeze or from the executive denying the legislature adequate funding.

Another major capacity gap in the legislature of many African countries is the lack of professional staff to collect, analyse and convert data into meaningful information for legislators to use in debates or committee meetings with technical issues. This is evident from the studies in several countries, including Egypt, Mali, Nigeria, Senegal and Zambia. Many legislatures also lack professional or trained support staff to do administrative work and organise meetings, interviews and consultations. The Malian legislature is a case in point: there are only 6 parliamentary assistants for 11 working commissions and only 5 legislative agents. In Egypt poorly informed legislators are unaware of the political, social and economic context of legislation. In Nigeria the inability of legislators to identify the needs of their constituencies means they hardly initiate bills in parliament, so 70% of bills come from the executive.

The level of education of legislators in many African countries is generally low in relation to the functions they are expected to perform. Most inadequately comprehend the role of parliament in the governance system, its working procedures, rules, regulations, norms and conventions and are thus unable to be effective. The educational requirements to be a parliamentarian are still very low in most countries. For instance, in Kenya a candidate for parliament must present a certificate of proficiency in English or Kiswahili before the Electoral Commission. And in Lesotho the minimum qualification for election to the Lower House is the ability to read and write either Sesotho or English, the country's two official languages.

Figure 7.2 Expert opinion on the influence of opposition parties in parliament on government policy, programmes and legislation

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

Legislative committees in many countries are also very weak due to low educational standards of members, the lack of a professional team to serve those committees and the fact that political patronage is often a key determinant of who serves in a committee and in what capacity. The result of this is the legislative committees' inability to perform investigative and oversight functions.

Lack of regular and reliable consultation with civil society, the private sector, universities, think tanks or the rural community—all useful sources of information and knowledge for policy purposes or legislation—has become a serious impediment to the effectiveness of most legislatures in Africa. There is also very limited consultation among legislators, government ministries and agencies and state-owned enterprises, despite the fact that parliament should exercise oversight power over the other organs. This problem is caused by the lack of parliamentary resources or incompetence and negligence of legislatures.

There is also very limited consultation among legislators, government ministries and agencies and state-owned enterprises, despite the fact that parliament should exercise oversight power over the other organs

Opposition parties in many African parliaments are very weak and could hardly engage the government in serious debates on major governance issues and policy options. Opposition party members in parliament are usually co-opted in legislative debates by the dominant or ruling party, weakening legislative deliberations and the capacity of members of parliament to effectively articulate the diverse interests of the people they serve.

The majority party in parliament often has disproportionate influence over members of opposition parties and uses this leverage when making key appointments, including speaker or senate president, chairperson and members of strategic committees. This, too, undermines the capacity of opposition parties and significantly restricts their participation in parliamentary matters.

Accordingly, and with the notable exceptions of Ghana and Mozambique (as per figure 4.1) the vast majority of the experts surveyed across all project countries said that opposition parties exerted a weak or no influence at all on government policy, programmes and legislation (figure 7.2).

The judiciary

The judiciary in many African countries does not have operational independence because the executive determines the appointment, promotion and remuneration of judicial officers. The prospects of career mobility for judges therefore depend largely on how well they can court and patronise the executive. In most cases the budget and funds of the judiciary are controlled by the Ministry of Justice (an executive arm of government), which creates bureaucratic procedures in financial matters and the possibility of discriminatory funding to be used against "erring" courts.

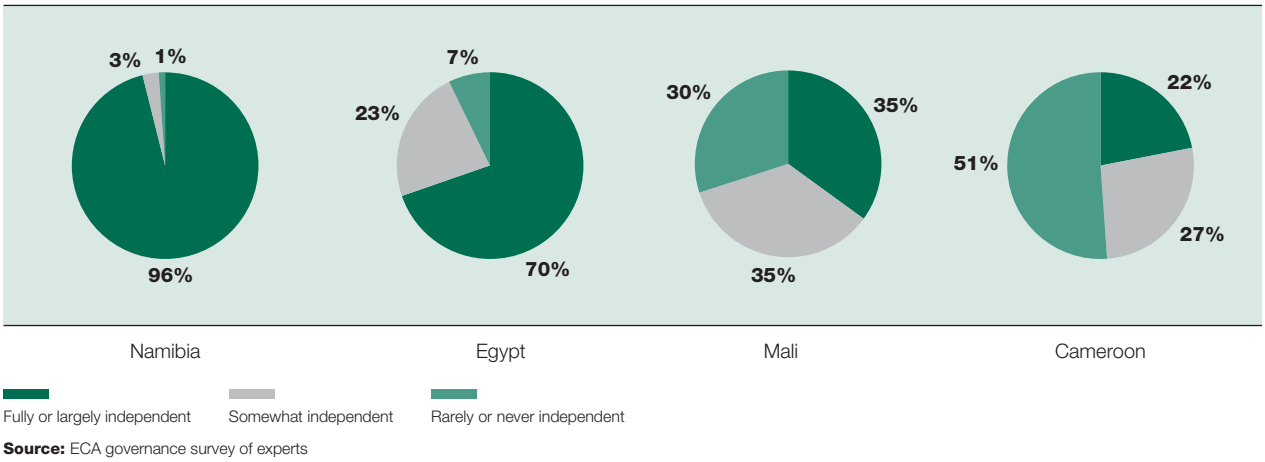
The judiciary in many countries in Africa lacks an adequate number of qualified and professional staff

In Zambia, for example, bureaucrats in the Ministry of Finance and National Planning determine funding for the judiciary, which is heavily dependant on court fees to conduct its operations because approved budgets are rarely disbursed in full. In Swaziland the performance of the judiciary is affected heavily by the lack of financial autonomy. The budget and funds of the courts are directly controlled by the Ministry of Justice. The experts surveyed overwhelmingly agreed that Namibia's judiciary is independent and mostly agreed that Egypt's was as well as (figure 7.3). The opinions on Mali and Cameroon's judiciary were mixed. In terms of rating integrity, on average across project countries, the results are mixed: 30% of experts deemed their judiciaries above or largely free from corruption, while 35% said they were fairly or completely corrupt (see also figure 4.8).

The judiciary in many countries in Africa lacks a qualified and professional workforce. The Gambia relies heavily on expatriate judicial officers on contractual arrangements. Of the seven judges in the High Court, only two are Gambians, two are on technical assistance, one is a foreign judge on contract and two seats are vacant. The Ugandan judicial system is also extremely slow due to the insufficient number of judicial officers. In Swaziland the magistrate courts, the High Courts and the Courts of Appeal are staffed with well-trained personnel, but there are not enough of them, which hampers the efficiency of the court system. Between April 2002 and March 2003 of the 3,430 cases registered in the five busiest magistrate courts in the

Figure 7.3 Expert opinion on the independence of the judiciary in Namibia, Egypt, Mali and Cameroon

Share of experts surveyed, by country (%)



Source: ECA governance survey of experts

country, 1,480 cases were still pending. In the Supreme Court of Mauritius a case that is lodged by a statement of claim can take three to four years to come to trial. The lack of an adequate number of judges and other officers is also a limiting factor for Burkina Faso's judiciary. Burkina Faso has only 300 judges for its 12 million people.

In many countries judicial officers are poorly trained and thus unable to perform their functions efficiently and effectively. This problem is especially pronounced in lower courts. In Lesotho the Central and Local Courts are presided over by people without any formal legal training. The minimum qualifications for aspiring court presidents, presiding officers in these courts, are a high school certificate plus a few years' experience as a clerk in a Local or Central Court. Magistrates do not attend a judicial training institution but are recruited directly from university. The only minimum qualification for becoming a magistrate is a bachelor of law degree.

In many countries the judicial system as a whole is poorly funded and judicial officers poorly remunerated, which demotivates them, promotes corruption and reduces commitment

Several African countries lack a Law Review Committee that sits on a regular basis. Major reviews are made through the National Assembly as needed. In Mauritius the attorney general often has to rely on foreign experts to review civil and commercial codes. Where committees exist, their performance has been less than satisfactory. In Tanzania the Law Reform Commission, whose objective is to ensure that the laws in force are reviewed regularly and changed when needed, is located in the Ministry of Justice and Constitutional Affairs, but it is plagued by severe financial problems.

Material and facility shortages are commonly cited as a major problem limiting the smooth functioning of the judiciary. In Tanzania the scarce supply of stationery is intensely felt by those who go to court to follow up progress of their cases. In one district a court that ran out of folders continued opening new cases and keeping records in folders improvised from empty cement bags (made of paper) collected from nearby construction sites. The situation is reported to be worse in some rural areas. The resident magistrate courts in Dar es Salaam and the High Court have their share of experience with shortage of stationery, too. A few years ago cases filed in all the registries in Dar es Salaam, both civil and criminal, could not proceed because there was no paper. In Zambia court proceedings often have to be adjourned because of lack of stationery. This, coupled with poor office and residential accommodations for judges and lack of information technology and electronic case processing, has hampered the efficiency and capacity of the judges and adversely affected the dispensation of justice in many countries.

In many countries the judicial system as a whole is poorly funded and judicial officers are poorly remunerated. This demotivates them, promotes corruption and reduces commitment. This is also why courts have poor facilities, cases are delayed and access to justice is denied for many people. For example, in Malawi the judiciary remains underfunded despite recent funding from the European Union and the U.S. Agency for International Development—with negative consequences for its institutional capacity. At times, over one third of the total prison population were on remand. These figures suggest that the courts do not have the capacity to deal with the volume of cases placed before them. In Tanzania poor remuneration means judges have to engage in informal sector activities to augment their income.

The overall consequences of these deficiencies restrict the access to justice for many poor and marginalised people as shown by the substantial share of experts surveyed in Lesotho, Cameroon, South Africa and Ethiopia who said that first instance or lower courts are rarely or never accessed by citizens within three days; the exception was Morocco (figure 7.4). The average across project countries is that 42% of experts agreed that the courts are rarely or never accessed quickly (see also figure 6.10). Delays also impede the maintenance of the rule of law and due process of law.

The executive

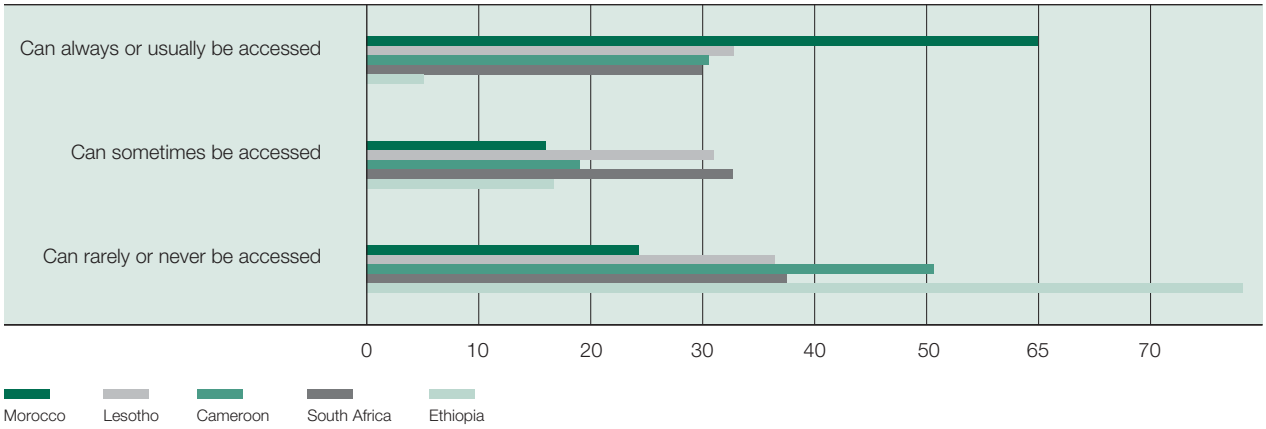
The executive and the public sector in general comprise the various tiers of the government (local, regional and national), the civil service and bureaucracy, state-owned enterprises and, in most instances, the electoral authority. The capacity issues and deficits identified cut across all these institutions with varying degrees of intensity.

Several national country reports found that poor educational qualifications had a negative impact on policy decisions. Furthermore, most local government administrations lack qualified human resources, particularly at the middle management level. Moreover, training needs for personnel are not met and management and service delivery processes are not properly in place.

Poor facilities, limited budget, poor management and the absence of a strategically oriented training policy have impeded the advancement and development of the skills of civil servants in many countries. As a case in point, in Lesotho the public service is bottom heavy and thins out towards the top. Only about a quarter of public servants hold university degrees, and many highly qualified public servants remain in the public service only briefly before moving on to the private sector within

Figure 7.4 Expert opinion on citizen accessibility of first instance or lower courts within three days in Morocco, Lesotho, Cameroon, South Africa and Ethiopia

Share of experts surveyed, by country (%)



Source: : ECA governance survey of experts

the country or going abroad. Factors identified as responsible for this "brain drain" from the public sector include low salaries that do not compete with those offered by private or state-owned enterprises and poor working conditions that stifle individual initiative and lead to low morale.

Several country reports also made a direct link between poor education and low wages and the rising culture of corruption and embezzlement of public funds, which have crippled national development and weakened public institutions in many countries. In Cameroon, Chad, Ethiopia, Kenya and Malawi, more than 50% of the experts surveyed found that the executive is largely or completely corrupt. Overall across project countries, 35% of the experts said the same about the executive.

In Kenya rampant corruption in the civil service can be traced back to the Ndegwa Commission Report of Inquiry of 1971, which allowed civil servants to engage in private business, and to the poor terms and conditions of service. Corruption has affected revenue mobilisation and resource use, leading to, among other problems, persistent budget deficits, a decline in the performance of the economy and dilapidated infrastructure caused by shoddy construction work abetted by corruption in the tendering system. For instance, in Lesotho many cases of theft of public funds or property by public officers are reported every year, but prosecution of those cases often takes too long to finalise.

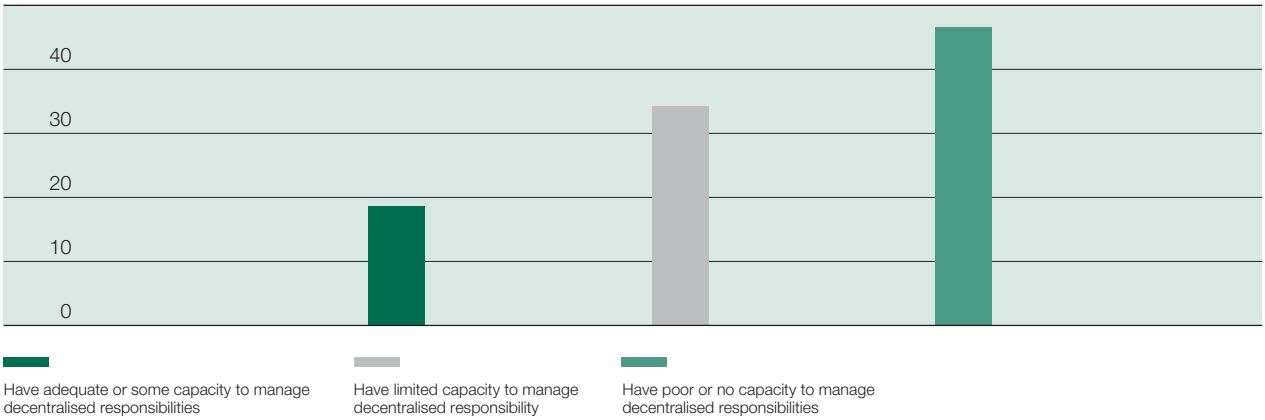
The inability of public institutions to provide enough incentives, including wages, salaries and favourable working conditions, has resulted in the continuous migration of a competent workforce to the private sector

The inability of public institutions to provide enough incentives, including wages, salaries and favourable working conditions, has resulted in the continuous migration of a competent workforce to the private sector. In most coutries very low wages have forced many civil servants to take early retirement and move to the private sector. Attracting recent graduates has also proved difficult for the same reasons.

Some countries attributed the continued decline in performance of the executive to ongoing civil service reform programmes, which aimed to reduce the size of the civil service but inadvertantly caused many qualified professionals to leave with healthy severance packages without attracting the desired individuals to replace them. Furthermore, savings on staff reductions were not necessarily reinvested in the civil service as originally intended. For instance, in Kenya there is a lack of qualified staff to draft bills in the Office of the Attorney General, lack of surveyors in the Ministry of Lands and a police-to-population ratio that is one half less than the United Nations recommendation of 1 officer for every 500 people. The police also lack essential skills, especially for researching crime and security issues. These factors have all contributed to the steady increase in insecurity and crime.

Lack of appropriate material and administrative resources is a major impediment to the performance of the executive. In most countries various institutions of the executive do not have adequate computers, vehicles or stationery, and bureaucratic red tape renders most ministries and public agencies slow and inefficient. Malawi's Public Accounts Committee and Budget and Finance Committee have criticised government departments' use of resources and pointed to inefficiencies in their accounting.

Figure 7.5 Expert opinion on the capacity of local governments and administrations
Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

Local government

Due to a preoccupation with nation building, integration and economic development, local governments were either abolished or systematically undermined after many African countries gained their independence. For instance, in Swaziland the central government emphasised controlling rather than regulating urban local governments by recruiting staff members and controlling the budget and finances of the councils. Cases of central government interference in local government activities are also widespread. In Zambia the ruling party cadres have allocated plots in illegal settlements with apparent impunity when they have no power to do so, and efforts by some councils to demolish these structures have been met with fierce resistance from politicians who draw political support and constituencies from illegal settlers and party cadres.

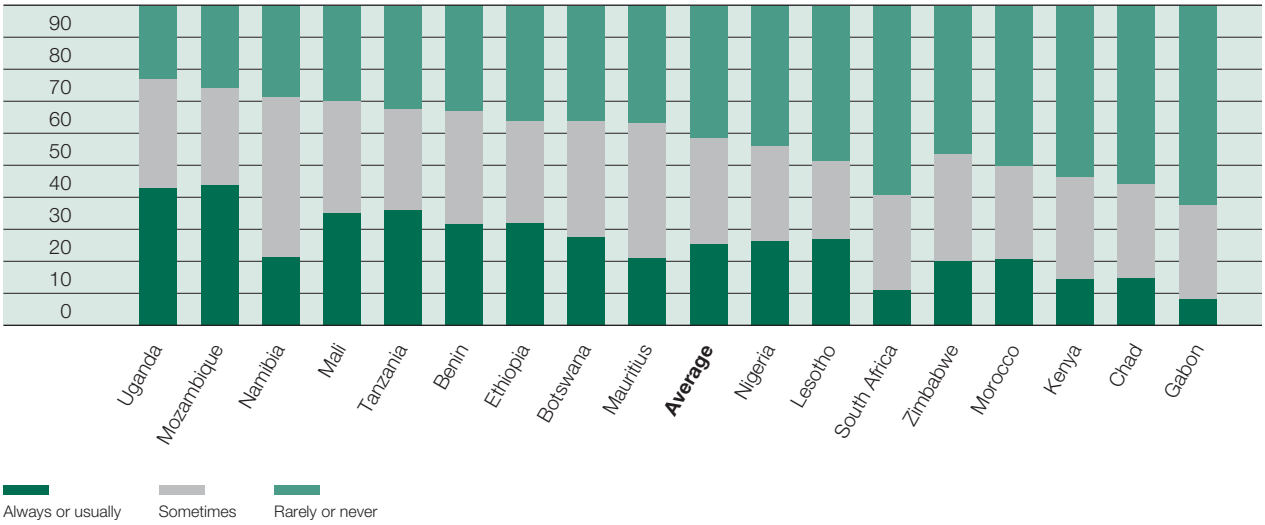
Due to a preoccupation with nation building, integration and economic development, local governments were either abolished or systematically undermined after many African countries gained their independence

Local authorities rely heavily on funds from the central government. They also tend to lack financial management and organisational skills. In Botswana local governments have limited independence in raising revenue but more flexibility in spending, except in the main areas of local government spending—namely, education, health, water and sanitation—which are directly controlled by the Ministry of Local Government. During the military era the federal government of Nigeria took over important functions and revenue resources that had previously belonged to regional governments. The level of local government financial dependence on the central government is also substantial in Ethiopia. In Nigeria and Zambia inadequate human and financial resources are major constraints among local authorities, the majority of which are unable to pay salaries without subventions from the central government or have not paid salaries for several months.

These deficiencies have had an obvious deleterious impact on the capacity of the local governance institutions and on the morale of the local government officials. Most of the experts surveyed across the project countries said that local governments and administrations were severely lacking the capacity to manage their responsibilities effectively (figure 7.5).

Figure 7.6 Household opinion on whether complaints about poor services given by the local government are dealt with satisfactorily

Share of experts surveyed, by country (%)



Source: ECA governance survey of households

Households were more divided over whether local governments responded to complaints they had. Some 58% said that complaints were always, usually or sometimes dealt with satisfactorily; 41% indicated that they rarely or never were (figure 7.6).

Households were divided over whether local governments responded to complaints they had, with some 58% saying that they were always, usually or sometimes dealt with satisfactorily while 41% indicated that they rarely or never were

Capacity gaps in nonstate actors

As discussed in other chapters, strong networks and organisations of nonstate actors are critical for influencing governance and policymaking. An enhanced role for nonstate actors in governance is desirable because it expands the political space for civil society participation. A successful democracy requires a politically conscious citizenry that participates in the political process beyond the ballot box.

Civil society organisations can help communities articulate their needs and demands effectively, especially by strengthening networks and partnerships among themselves. The functions of civil society organisations, however, are more than advocating and serving as watchdogs for the communities they represent: they also provide services to poor and marginalised people.

Civil society organisations

In most countries civil society organisations suffer from internal organisational weaknesses, lack of organisational and managerial skills and training, very limited financial resources and a constraining external environment. These institutional capacity gaps have affected the effectiveness and sustainability of their initiatives and

operations, having an adverse impact on their service delivery capabilities. In Benin, Burkina Faso and Ethiopia, as in most African countries, many nonstate actors lack a democratic culture, and especially tolerance and constructive dialogue among themselves and with the state.

In many African countries nongovernmental organisations are concentrated in urban areas, limiting their outreach to rural areas and thus reducing their impact on potential beneficiaries. For example, in Ethiopia nongovernmental organisations have reached only 15% of the population, leaving millions untouched.

One of the major constraints faced by nonstate actors is a shortage of funds and trained human resources with sufficient and requisite management experience. The shortage of competent personnel to lobby and influence political decisionmaking and institutionalise networking relationships among nonstate actors is also a major constraint on performance. The lack of adequate financing has further contributed to inconsistency in the implementation of programmes, as well as the loss of and inability to attract experienced and well-qualified staff. The lack of financial, human and logistical resources in countries like Gabon and Mali limits the effective involvement of the nongovernmental actors in the daily political, economic and administrative life of the country. Further, nonstate actors in many countries such as Botswana, Egypt, Ethiopia, Gabon, Lesotho, Malawi, Mali, Mauritius, Senegal and Zambia have serious capacity gaps in the general training of their members, leadership capacity building, support and training in development of strategic objectives and planning, research capacity, documentation and information technology resources.

Nonstate actors have an important role in complementing governments' efforts at promoting social and economic development, but in most African countries they are not fully recognised as essential vehicles of the democratic process

Promoting sustainable development requires mobilising human and material resources and establishing partnerships among government, civil society and the private sector at both the national and international level. To be effective and sustainable these partnerships must exist at all levels of the decisionmaking, implementation and monitoring processes of the development projects.

Nonstate actors have an important role in complementing governments' efforts at promoting social and economic development. But in most African countries they are not fully recognised as essential vehicles of the democratic process. Governments also at times constrain the efforts of civil society organisations to be effective with burdensome registration and operational requirements. A culture of information secrecy pervades Ethiopia, Kenya, Malawi and Zambia, for example. Members of parliament and ministers are mostly unwilling to share information with journalists and civil society organisations, and civil society organisations working in the same area are reluctant to share information with each other. Much of the secrecy is attributed to entrenched practises and traditions from previous regimes.

Political parties

In a democracy political parties mobilise and aggregate public opinion, promising many things (the Party Manifesto) to the public that they will implement once elected. Political parties are now constitutionally free to operate in all African countries, although in reality some countries impose restrictive administrative requirements and legal limitations on their activities. They are relatively free to operate in Benin,

Ghana, Mauritius, Nigeria, Senegal and South Africa but less so in Ethiopia, Malawi, Tanzania and Uganda.

Many political parties in Africa have little capability to effectively articulate issues, engage in debate, promote their political principles and visions of society or defend the interests and rights of their supporters. They are at times disorganised and disoriented because they do not have competent and committed leadership, have few professional personnel and their internal organisational structures are weak. The result is that political parties in Africa are seldom different from one another. They do not articulate different visions of society and do not capture or represent the yearnings of the people. For example, in Nigeria the People's Democratic Party, which prides itself on being the largest political party in Africa, has no clear development agenda or vision for the Nigerian society. The same applies to many opposition parties in other African countries.

Most political parties in Africa are not professionally organised and do not have functional internal democratic structures. The rules and regulations that they do have are rarely implemented—usually only to discipline or expel unwanted members. Many of the existing political parties are just emerging from being the ruling party in a one-party state, while this political culture is still pervasive in many African countries. Thus political parties remain weak and incapable of promoting democratic values in society, as they hardly practise it in their own parties.

Many political parties in Africa have little capability to effectively articulate issues, engage in debate, promote their political principles and visions of society or defend the interests and rights of their supporters

Insufficient funding is a common problem for many African political parties. Even though in some countries (for example, Benin, Malawi, Mali, Nigeria and Tanzania) the state provides funding, most political parties depend on a few rich people, which creates problems of internal democratic accountability and poor leadership. In Kenya the lack of both financial and material resources has impaired internal democracy in the political parties that sprang up when the multiparty system was introduced. The majority of these parties are one-person outfits run more or less like private companies. For instance, internal organisational capacity of the two opposition parties in Malawi, namely the Malawi Congress Party and Alliance for Democracy, has been significantly weakened as a result of internal divisions.

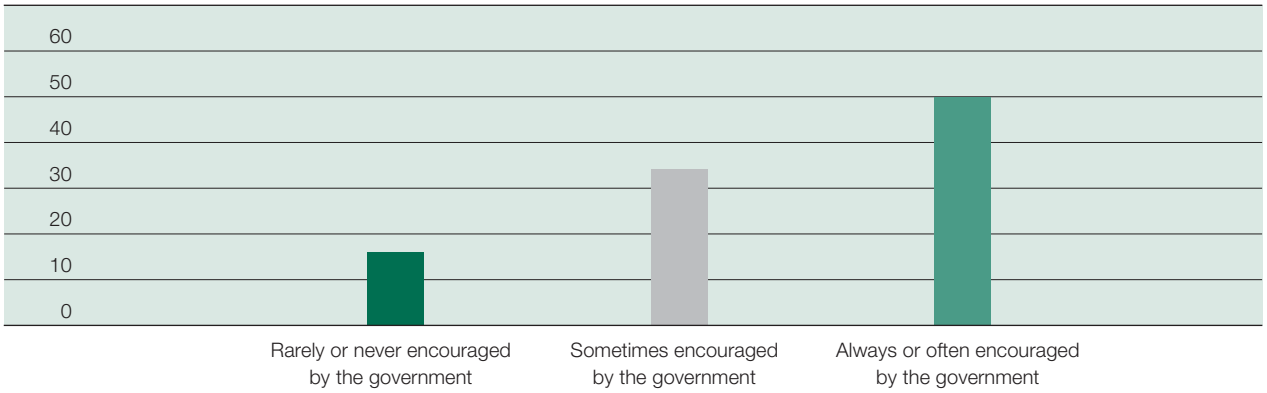
Government harassment, intimidation and difficulties with registration and operation are common features that limit the capacity of political parties in many African countries. Continuous cases of abuse and intimidation have been reported in Ethiopia, Ghana, Kenya, Malawi and Tanzania. In some countries the government reportedly used force to raid political rallies of opposition parties, and opposition party supporters are regularly harassed. In Egypt, for instance, there is limited political space for the operation of opposition political parties.

The private sector

In several countries governments have managed to institute a macroeconomic policy, legal and regulatory environment that is more conducive to both local and foreign investment than when the state owned and ran the economy. Liberalisation of markets and an emphasis on private sector development, for instance, have significantly enhanced opportunities for private sector initiatives. But much more is needed to strengthen the capacity of the private sector and make it more

Figure 7.7 Expert opinion on the encouragement by the government for the effective operation and involvement of the private sector

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

competitive, including measures that governments should take to publicly disclose information, enforce contracts, implement bankruptcy laws and commit themselves to competition and refrain from creating artificial barriers.

On the whole African governments have improved the environment for the private sector, with close to half of the experts surveyed across all the project countries saying that the effective operation and involvement of the private sector is always or often encouraged by the government and another third saying that this was at least sometimes the case (figure 7.7).

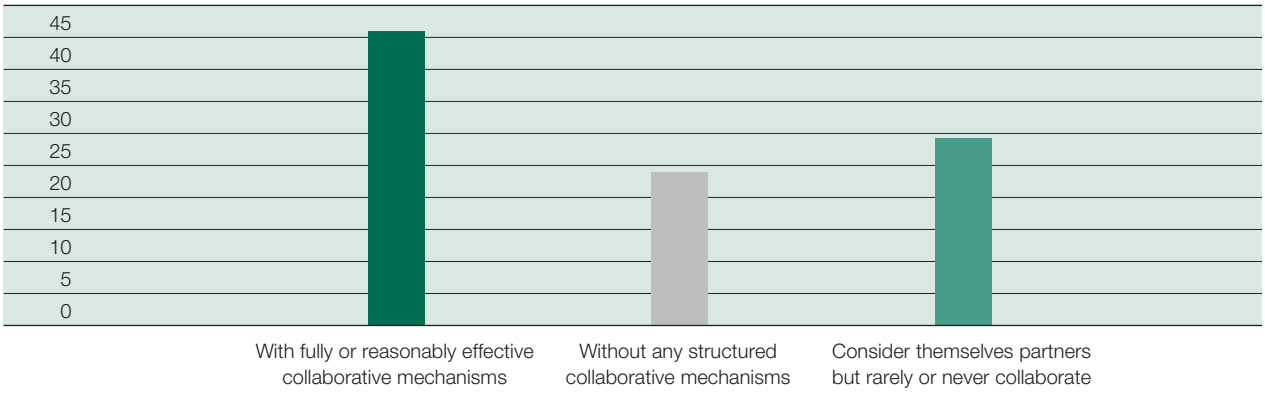
One of the major problems for the growth of the private sector is contract enforcement: a lengthy court process is required to enforce them, resulting in excessive transaction costs

Unpredictable regulatory enforcement, unstable policy framework and weak public regulatory capacity are negatively affecting the growth and development of the private sector. One of the major problems cited is contract enforcement: a lengthy court process is required to enforce contracts, resulting in excessive transaction costs. This is especially prevalent in Ethiopia and Lesotho. In general, governments need to establish an efficient and effective regulatory, legal and political framework and a responsive macroeconomic environment to ensure the rule of law and the predictable operational effectiveness of institutions.

The results of the survey of experts show that the private sector and the public sector are not always effective partners. There are few structured collaborative mechanisms in place, and where they do exist there is hardly any operationally effective collaboration. A significant share of the experts surveyed across all countries said that the private and public sectors consider themselves partners in development but rarely or never collaborate. This clearly shows that public-private partnership in development is not conceptually well founded or understood by both parties. It is encouraging, however, that more than 45% said that the private and public sectors have fully or reasonably effective collaborative mechanisms (figure 7.8).

Figure 7.8 Expert opinion on whether the private and public sectors are partners in development

Share of experts surveyed, average across all project countries (%)



Source: ECA governance survey of experts

In general, very few countries have an informal sector policy, despite the sector's rapid growth. In many countries, there is official tolerance of the informal sector, but more is needed to make the sector more competitive and viable. A major problem often cited by members of the informal sector is severe difficulty accessing credit from official financial institutions.

Toward enhancing capacity development

Strong, efficient and effective institutions are understood to be prerequisites for establishing and entrenching a culture of accountability and transparency

The relationship between strong institutions and good governance is clearly acknowledged by most African governments. Effective institutions are understood to be prerequisites for establishing and entrenching a culture of accountability and transparency in managing national affairs. In terms of performance, quality, fairness and efficiency, the survey of experts found that the legislature, judiciary and executive have low capacity due to institutional weaknesses, which in turn has resulted in much corruption and poor performance. Other nonstate actors have similar capacity deficits.

Studies have clearly shown that African countries are at different stages of development with regard to the levels of capacity in the institutions of governance, as well as capacity-building initiatives and processes. There must, therefore, be flexibility and considerable local ownership in identifying and setting priorities for capacity-building initiatives and requirements.

This section sets out approaches to improving the capacities of African government and nongovernment actors, many of which have been discussed in previous chapters. There is a growing commitment to capacity building and good governance, with much being done to meet the capacity requirements of governance institutions. More needs to be done for the continent to make significant advances

in building democracy and promoting sustainable social and economic development.

The legislature

Because many African Parliaments and Assemblies still lack well-educated and informed legislators and do not have the material or human resources, like libraries, computers and research staff, to effectively analyse bills or budgets put before them, the dominance of the executive continues to erode its effectiveness. The recommended changes to strengthen the capacity of the legislature include:

An independent parliamentary service commission is needed with the power and financial resource to recruit, hire, fire and discipline staff

Strengthening parliamentary and affiliated organs

Parliament needs the power to control and organise its own agenda independent of the executive or in consultation with it as an equal partner. A joint committee where the two branches of government could interact, exchange views and priorities and come to agreement could facilitate this. It would also promote co-operation and a good working relationship when the two branches are controlled by different political parties.

An independent parliamentary service commission is needed with the power and financial resource to recruit, hire, fire and discipline staff and with the infrastructure and facilities to train and upgrade staff. The role of the legislators should be strengthened by providing each legislator with a secretary and a crop of professional staff or by creating a common pool of researchers under the control of the parliamentary service commission.

Legislative committees should be empowered to access relevant documents in the executive, summon witnesses from within or outside the government, ensure due consideration of recommendations by the executive and recruit and maintain an appropriate supportive administrative and professional staff. Their budgets must be increased for cases and issues to be properly investigated. And the workload of the legislature should be divided into manageable tasks to enable it to consider more than one issue at a time and to devote more time to complex issues and reviewing bills clause by clause.

Expertise must be developed on the issues within the parliamentary committees' competence, which would put members in a stronger position to initiate their own bills or amendments to reflect their policy preferences. The legislature should also make efforts to have a fair representation of minorities or disadvantaged groups, including women. Within stipulated and accountable budgets, the legislator or the commission should be allowed to contract out research projects to national universities, think tanks and research institutions.

A documentation centre with appropriately stocked libraries should be established and managed by professional librarians, updated information and translations, desktop publishing facilities and electronic and information technology equipments. Legislators' ability to contribute effectively in the legislature is affected greatly by the lack of office accommodation, vehicles, computers, Internet access and telephones. These goods must be produced at minimum standards for good

Box 7.1 Botswana: enhancing legislative capacity

Botswana has taken significant steps to improve the capacity of its legislature and lawmaking in the country, including:

- Establishing the Research, Information and Public Relations Division within parliament to enhance the capacity of members of parliament by providing them with information to participate effectively in policy debates.
- Completing a new legislative chamber in 1995 to improve the physical infrastructure available to parliament.
- Providing computers and Internet access to legislators and networking parliamentary staff offices.
- Planning a wide area network between the research division and the constituency offices to improve efficiency in communication.
- Offering better conditions of service to legislators, such as a free-rent cost accommodation in order to attract more qualified people into politics.

Source: Botswana country report

performance. Botswana has made much progress in improving material resources for the legislature (box 7.1).

Enhancing professional and communication skills

Continuous skills upgrading on parliamentary procedures and constituent relations is needed for members of parliament. To address the weak capacity of members in conducting business in the legislature, it may be necessary to require that aspiring parliamentary candidates possess an adequate level of education to discharge their responsibilities.

Expertise must be developed on the issues within the parliamentary committees' competence, which would put members in a stronger position to initiate their own bills or amendments to reflect their policy preferences

Independent facilities would also be useful for familiarising newly elected legislators with the their role of the legislature in the governance processes of the country, the institution's procedures and conventions and its general working environment. Mock parliaments and interschool parliamentary competition would also sensitise successive generations to democratic governance.

Legislators in most African countries have shown very little interest in interacting with their constituencies. Obviously this limits their knowledge and understanding of the problems and wishes of the people and, consequently, their ability to represent and defend their interests. It is thus imperative that they be reoriented and empowered to improve their interaction with civil society and their various constituencies and that parliaments revise the public consultation mechanism in their lawmaking process. Ghana has had much success in improving consultative capacities (box 7.2).

Parliamentary committees are also a key channel of communication between parliament and civil society organisations, which in most democracies use the committees to try to influence the legislative process. This avenue of communication must be adequately developed. And legislative proceedings and major reports must be

Box 7.2 Ghana: civil society organisation helps strengthen the capacity of parliament

In 2002 the Centre for Democratic Development in Ghana introduced a major project called "Strengthening the Capacity of Ghana's Parliament for Enhanced Accountability and Civic Participation". The objectives of the programme were to:

- Strengthen the technocratic base of five key parliamentary committees, namely Judiciary, Constitutional and Legal Affairs, Subsidiary Legislation, Government Assurances and Local Government and Decentralization.
- Strengthen the administrative and management capacity of the institution of parliament.
- Promote the development of an open parliament and expand parliament–civil society interaction as well as civil society input into the legislative process.
- Make the rules and procedures of parliament conform with the 1992 constitution and Ghana's democratic aspirations.

The Centre for Democratic Development took several actions to achieve these objectives, including:

- Training research officers of the newly created Research Unit for three months.
- Introducing public hearings by parliamentary committees, a novelty in the country's legislative history.
- Organising workshops on capacity building for parliamentary committees.
- Organising a workshop on executive-legislative fusion to improve understanding between the two arms of government.

Source: Ghana country report

translated into local languages and distributed to schools and civil society organisations, so that the citizens are sufficiently informed of legislative activities.

Upgrading parliamentary processes

The legislature must develop rules and ethical codes and standards of conduct for its members and ensure that they are effective

Laws that are at variance with the constitutional provisions to strengthen constitutionalism within the legislature must be completely revised. The legislature must also develop rules and ethical codes and standards of conduct for its members and ensure that they are effective. After instituting probity within its ranks, the legislature will then be able to strengthen its anticorruption role, especially in checking the executive. Legislatures should establish an Office of the Ombudsman and a Human Rights Commission and ensure that they are appropriately resourced and adequately equipped.

Opposition parties must be able to perform their legitimate legislative functions effectively without harassment from the ruling party. They should be provided with the appropriate resources including relevant legitimate information from the executive and access to ministers and bureaucrats to enable them perform their functions as critical agents of the people and as a potential alternative to the current government. They should also be consulted on major national issues, such as national security and the HIV/AIDS epidemic.

The judiciary

A number of institutional capacity gaps exist in the judiciary, police and other law enforcement institutions, including inadequate budgetary allocations, limited accessibility to justice, poor remuneration, a shortage of judges and magistrates and poor

recruitment and promotion procedures, especially for the police. All these result in corruption, poor accountability and a weak judicial system. Measures for addressing these capacity gaps are presented here:

Professionalising the judiciary

The subservience of the judiciary to the executive is a noticeable problem in many African countries. This problem should be tackled to ensure that the judiciary is independent. A separate Judicial Service Commission should handle the appointment and promotion of judges, while the remuneration of judges should be determined by the parliament and charged to a consolidated fund.

The backlog of cases is caused by the shortage of judges and insufficient support to ensure quick dissemination of information to all agencies involved with the administration of justice

The backlog of cases is caused by the shortage of judges and insufficient support and to ensure quick dissemination of information to all agencies involved with the administration of justice. The number of judicial staff, including judges, should be increased, and continuous professional training should be offered to judges, court clerks, registrars, secretaries and staff that are involved in case tracking and downloading of information on cases. The offices should improve internal communication by implementing an efficient and effective case management system that alleviates the problems inherent in the manual system. Also needed is a mentoring programme that exposes young promising lawyers to senior reputable judges and magistrates. Senegal's Good Governance Programme has improved judicial performance while maintaining transparency and accountability (box 7.3).

Operations must be streamlined and facilities must be enhanced, including modernization of information technology as a top priority. Research facilities should be established to identify, select and upgrade laws and to integrate traditional laws and conventions. Existing university faculties could be used to conduct research, collect data, document findings and keep the judiciary up-to-date on legal issues and best practises.

Box 7.3 Senegal develops programme to enhance judicial performance

Senegal's Good Governance Programme outlines objectives and steps to be taken to enhance judicial performance, including developing a judicial system that is close to the people that achieves quick and fair justice and that improves the integrity of the judiciary. Steps to be taken include:

- Improving the training of magistrates and officers of the court by introducing and promoting new information and communication technologies.
- Making the magistrates and clerks of the court more specialised.
- Increasing the independence of the judges and magistrates by raising the status of and providing more statutory guarantees to judges and magistrates while adopting anticorruption measures.

Source: Senegal country report

The judicial system should focus on rehabilitation, maintaining and promoting better, safer and peaceful communities and integrating them into the new evolving social, political and economic contexts—rather than on punitive measures.

Supporting improved judicial bodies

Only limited mechanisms exist for consumers of judicial services to lodge complaints against judicial officers; an independent Judicial Complaints Commission should be established to receive and expeditiously hear credible complaints against any officers.

To deal with corruption and other related ethical and normative issues in the judiciary, a code of ethics to govern the members of the judiciary should be introduced that outlines the expected and the prohibited forms of conduct as well as the penalties for transgressions. In addition, the government should set up an independent tribunal to monitor and report on the conduct of judicial officers against whom specific allegations of corruption have been made. Any corrupt officials in the law enforcement agencies should be immediately fired and prosecuted, if possible.

Police personnel must be trained in human rights and community relations in order to produce a people-friendly police service

Judicial service commissions must be strengthened by endowing them with independent powers to formulate transparent and enforceable professional leadership codes and to investigate, expose and discipline judges, magistrates and supporting staff. The human and material needs of the Judgment Execution Department should also be enhanced. And adequate remuneration for judges and law enforcement agencies such as the police and prison services should be ensured.

An Office of the Public Defender should be established and equipped with the necessary facilities, equipment, budget and personnel. And governments should establish a legal aid programme, to be managed by the attorney general and representatives of civil society, which indigent litigants can easily access.

Bolstering law enforcement

The state's capacity to provide security, protect individual rights of residents in all parts of the country and ensure adequate safeguard of property rights must be improved. Governments should recruit additional professionals and police officers to meet the UN recommendation of 1 police officer for every 500 people. The police and prison services must also be appropriately trained and sufficiently equipped to carry out their functions effectively and in a manner that is consistent with respect for the culture of human rights. Police personnel must be trained in community relations in order to produce a people-friendly police service. They must also be sensitized to governance principles and issues relevant to their respective countries. And they should be provided with the necessary funding and resources, such as vehicles and communication equipment, for efficient security service delivery.

Disrespect for the rule of law includes violations of human rights. Since the promotion and protection of human rights have not been given enough explicit focus in national development, governments should quickly develop a time-bound national action plan to promote and protect human rights, eliminate the culture of impunity by ensuring that all human rights violators are sanctioned irrespective of their standing in society. Since human rights violations are particularly rampant within the

police force and the prison service, governments should also establish a task force comprising the police commissioner, the prisons commissioner, members of civil society and judicial officers to investigate and recommend appropriate measures to make the police and prisons effective, efficient and accountable.

The executive

The executive generally lacks adequate capacity to implement and manage development policy. Lack of a skilled workforce is one of the key challenges facing the government. Another is poor service delivery, which requires institutional strengthening of government and state-owned enterprises. Other weaknesses relate to limited decentralisation of power and decisionmaking to local authorities. The following are specific recommendations put forth to address capacity needs of the executive:

Raising performance standards

Professionalism in the public sector has declined significantly in the last two decades. Many public servants have become demoralised because of poor terms of service. To restore professionalism, governments should take appropriate measures to promote a merit system in appointments and promotions and stop unethical practises biases and nepotism, appointment of noncareer public servants to undeserved positions, and abuse of office. To further enhance the integrity of the civil service and the executive, civil servants must be well remunerated. This is necessary if corruption and unprofessional practises such as moonlighting are to be checked or eradicated.

To restore professionalism in the ranks, governments should take appropriate measures to promote a merit system in appointments and promotions and stop appointment of noncareer public servants to undeserved positions

Governments should also move swiftly to improve public servants' terms and conditions of service by initiating better training and recognition systems. This will improve the poor policy implementation record, which in turn will enhance the legitimacy of the government. Professionals and other technically qualified persons must be recruited for the cabinet, with a view to deepening and broadening the skills base for government policymaking and implementation. Ethnic and gender representation throughout government and the top echelons of the civil service should be promoted to ensure wider societal perspectives and inputs into the public policy processes.

The education level required for holding high public offices should be raised to ensure minimal basic understanding of issues and management. In a rapidly globalising world where information and knowledge are critical in business and politics, legislators and policymakers must be appropriately educated and competent.

The roles and functions of the government must be redefined with a view to reducing the scope of operations to affordable levels. Service delivery principles, which emphasise public consultation, service standards, information, openness and transparency, monitoring and evaluation, redress and the like, should be put in place. Civil service reforms should also aim to improve human resource capabilities, ethics, deployment, grading and promotions, incentives to good performers, training and discipline and management and leadership. Governments must regularly update codes of regulations as well, make them accessible to all public servants and ensure their effective dissemination and implementation. Lesotho offers a good model of successful public sector reforms (box 7.4).

Box 7.4 Lesotho: public sector reforms initiated to boost executive capacity

As part of the efforts to enhance the efficiency of the executive in Lesotho, the government, with the assistance of development partners, adopted several strategies to streamline the recruitment, training and deployment of personnel at various levels. Significant steps were also taken to improve the operation of the civil service and enhance its capacity:

- Recruiting professionals and other technically qualified persons into the cabinet to deepen and broaden the skills base for government policymaking and implementation.
- Developing a national vision (Vision 2020) as a policy framework upon which all state programmes would be based.
- Initiating various national forums to discuss policy implementation and government performance. These are designed to aggregate input from all stakeholders in the design and eventual implementation and benefit of policy measures and state activities.
- Restructuring the public service through civil service reform to streamline service delivery in various ministries and to provide incentives to good performers.
- Devolving governance to the grassroots level by establishing local government structures in order to decentralise power and strengthen the efficiency of local structures to design and implement their own programmes.

Source: Lesotho country report

Decentralization and devolution of authority and responsibilities to grassroots levels are critical factors in promoting good governance

Encouraging further participation and decentralisation

The misunderstandings and suspicions between government and civil society must be eliminated and replaced with mutually informative dialogues on the needs and wishes of the people and the duties and responsibilities of the government. National forums should be held to discuss policy implementation and government performance with various stakeholders, such as labour groups, civil society, academics, the private sector and so on. This is essential to promote partnerships and support for the policy process. The government also needs strong relations with the media so that its activities are well publicised and so that feedback can be obtained from the people.

As a targeted strategy, decentralization and devolution of authority and responsibilities to grassroots levels—through the establishment of local structures appropriate to local needs and conditions—are critical factors in promoting good governance. Doing so facilitates local recruitment and training for political leadership and administration. An enabling environment must be created to promote and strengthen partnership and collaboration among nongovernmental groups, community-based organisations and the private sector at the local and community levels.

In view of ongoing reforms, as a priority, power must be dispersed to the levels where people can manage their own affairs effectively and meaningfully, to instill a sense of local ownership and pride and enhance accountability, transparency and checks and balances. With the appropriate structure and powers to collect revenue, a local government can reduce pressures on the central government and be less dependent on it, allowing it to focus on major national issues.

Reinforcing accountability and transparency

Accountability and transparency are major principles of good governance. They strengthen the legitimacy and authority of the institutions of governance as well as

their efficiency and effectiveness. Several mechanisms to ensure accountability and transparency of the government and its agencies should be put in place.

Public accounts should be made more easily accessible to the citizenry. Public meetings and consultations with civil society are ways that those in governance positions can interact with the public. Additionally, a system that ensures public access to information on government activities and performance should be enacted to empower the people and validate government's commitment to accountability.

An independent and sufficiently resourced anti-corruption commission should be established with powers to investigate and prosecute public officials, civil servants and citizens accused of misuse of public office or financial malfeasance. Other public watchdog offices, such as the Auditor General, Ombudsman, Public Complaints Commission and the like, must be appropriately resourced and equipped in order to function efficiently and effectively.

A supportive cabinet with the professional personnel, infrastructure, equipment and commensurate financial resources is needed to enable the executive to perform its functions efficiently and effectively

Irrespective of the political system, whether presidential or parliamentary, the tenure of the leadership should be restricted to ensure the vitality and credibility of the democratic processes. Leadership renewal would also ensure that the position remain challenging and attention focused on implementation of a vision within a limited timeframe. Furthermore, it would make it difficult to personalise the post, politicize the institution and corrupt other agencies of governance. A supportive cabinet with the professional personnel, infrastructure, equipment and commensurate financial resources is needed to enable the executive to perform its functions efficiently and effectively.

Elections are the key to democratic governance, so the capacity of electoral management bodies should be strengthened and the electoral process made free, fair and impartial. An independent and sufficiently resourced electoral body must be created to promote independent electoral management. Its membership cannot be limited to government nominees but should be drawn from a broad spectrum of society, including representatives of organised interests, such as labour groups, civil society and the judiciary. Their appointment should be confirmed by parliament, and they should have a specified tenure of office. The body should have its funding approved by parliament so that it does not rely on the executive's discretion, which may result in undue pressure and manipulation.

Electoral law must provide a level playing field for all political parties and actors in the electoral process. And the capacity of electoral bodies to resolve election disputes or conflicts should be enhanced. This requires recruiting highly qualified and skilled personnel and continuously training and exposing them to the changing issues and problems.

Nonstate actors

It is necessary to adopt a concerted set of measures that build the capacities of nonstate actors because they will help promote good governance, democracy and the rule of law.

Civil society organisations

Citizens need to be informed about what their governments are doing, what they are constitutionally mandated to do and what they are not allowed to do. This requires good programmes of civic education, strengthening of civil society and nongovernmental organisations, and other nonstate actors—like the media, universities and institutes of research, public policy and higher learning—so that they can effectively perform their respective functions in informing and educating the people, advocating for reform and identifying and exposing tendencies that might lead to institutional capacity deficits.

Governments should also promote for individuals and groups a culture of participatory engagement in public affairs by providing popular channels through which citizens can access or summon their leaders and request them to account for their actions or inaction

Institutions need training and resources to build their management capacity for fundraising and resource mobilization, strategic planning, leadership development, policy research and advocacy, project and programme design and monitoring, gender analysis and media and communication, among others. Governments should fund and promote such training programmes or provide tax incentives to groups conducting them. The state should also help mobilise both domestic and external funding for these purposes. In addition, they can promote joint civil society–public sector personnel training programmes to strengthen their partnerships and collaboration.

Governments should also promote for individuals and groups a culture of participatory engagement in public affairs by providing popular channels through which citizens can access or summon their leaders and request them to account for their actions or inaction. Ethiopia's Poverty Reduction Strategy Papers provided a promising opportunity for civil society organisations to do this (box 7.5).

In general, governments should make the modalities of creating and registering nongovernmental and community-based organisations as flexible as possible, and the context in which they operate should be liberalized in order to improve their capacity and performance. A network of communication, interaction and partnership among them, including labour unions, student organisations and professional associations, should be created. This would enhance the potential for mutual institutional support and opportunities for capacity building.

Box 7.5 Civil society engages the Poverty Reduction Strategy Papers in Ethiopia

The Poverty Reduction Strategy Paper process provided an opportunity for nonstate actors to influence governance and public policymaking in Ethiopia. Some nongovernmental organisations and civil society organisations, including the Forum for Social Studies and the Ethiopian Economic Association, formed a task force under the umbrella of the Christian Relief and Development Association to provide inputs for improving the Poverty Reduction Strategy Paper that originated from various stakeholders affected by the policy. The main objective of the exercise was to influence the policy and priorities of the government as contained in the strategic document.

Source: Ethiopia country report

To stimulate demand-driven creation and stakeholder control of nongovernmental and community-based organisations to reduce their dependency on external funding and influence, governments should provide accountable seed-funding predicated on mandatory internal democratic governance of the recipient organisations.

Civic organisations also need to establish their own internal codes of conduct to regulate the behaviour of their members. These codes of conduct should ensure good corporate and democratic governance, accountability, and transparency in the management of their affairs and resources. They should also provide guidelines to coordinate fundraising and resource mobilisation as well as networking, coordination, cooperation and communication. Nongovernmental organisations should also be required to publish their audited accounts annually, with sources of funding and programmes and activities performed.

Civic organisations also need to establish their own internal codes of conduct to ensure good corporate and democratic governance, accountability, and transparency in the management of their affairs and resources

For the media, private sector participation and investment to promote local ownership are needed, as are training facilities for professional journalists. Support should also be provided for publishing newspapers and magazines in local languages, which empowers people and promotes popular participation in public affairs. A better understanding between the government and the media, clarifying their respective roles, would also promote good governance and human development. And professional responsibility and ethical conduct for media practitioners should be ensured by a code of conduct developed and enforced by the media industry itself.

Political parties

The registration of political parties must be simplified and regularised, and the rules and regulations governing them must be standardised to make their application and reinforcement more transparent. State funding of political parties based on a mutually agreed formula, such as percentage of electoral votes or seats in the legislature (as in Malawi, Mali, Nigeria and Tanzania) should be considered because it could eliminate external influence through funding, minimise control by local rich or powerful individuals and eliminate financing as a significant blockage to creating independent political parties.

Professionalism is needed in party organisation and management, including the creation of research units and the promotion of a culture of information and knowledge-based party policies. And internal party democracy can enhance popular participation, increase transparency and strengthen accountability of leaders to the members in the parties. This is essential for improving the legitimacy and authority of political parties. Fostering dialogue and healthy debate between ruling and opposition political parties can minimise misunderstanding and friction, expand the arena of trust and enhance consensus on national issues, such as the imperatives of institutional capacity building.

The private sector

The general business environment must be improved in Africa, with predictable macroeconomic policies that promote stability and a credible tax regime that is

likely to attract foreign direct investment and encourage entrepreneurship. Governments should also provide the basic infrastructure for optimising private sector performance. This entails the supply of dependable, uninterrupted electricity and water, good roads, cost-effective and efficient telecommunications and security.

Leaders are needed who understand and are convinced of the importance of capacity building and who have the courage and political will to take appropriate action

Deliberate and concerted efforts must be made to encourage and promote the informal sector of the economy. In many African countries this sector employs a sizeable share of the workforce, making it a significant creator of wealth. Supportive policies for the sector include granting credit facilities with low interest rates for small informal sector entrepreneurs, providing easy access to land and other productive facilities for capacity enhancement and allowing property to be used as collateral for credit purposes.

In the final analysis, capacity building is a matter of deliberate human choice. It is a policy issue. It has occurred in Asia, Europe, North America and some African countries. Leaders are needed who understand and are convinced of the importance of capacity building and who have the courage and political will to take appropriate action. Also needed: a citizenry that is well informed, sufficiently empowered and highly motivated to discuss public affairs and governance issues. People must also be willing to embrace change and work-related productivity, ethics and codes of conduct as well as a culture of tolerance and accomodation.

It is hoped that in time Africa will be able to retain more of its own talent. The support of the international community is also essential in building capacity the continent, but all activities should be at Africa's initiative, design and responsibility. Externally derived capacity initiatives are not sustainable and are likely to be counterproductive because they are supply-driven rather than demand-driven. African ownership is critical in ensuring the relevance, efficiency, effectiveness and long-term sustainability of institutional capacity building in Africa.

Annex 1
ADF IV Consensus statement

Preamble

1. There is a clear consensus that good governance and sustainable development are two sides of the same coin. Good governance is a sine qua non for development in Africa. It implies efficient and accountable institutions—political, judicial, administrative, economic, corporate – and entrenched rules that promote development, protect human rights, respect the rule of law, and ensure that people are free to participate in, and be heard on, decisions that affect their lives. Above all, good governance is a leadership issue, enshrining the effective, transparent, and accountable discharge of responsibilities within the framework of capable states.

2. Africa's overarching challenge is to create strong, capable, developmental states – states in which peace and security is guaranteed; states that create an enabling environment for equitably distributed economic growth coupled with the promotion of education, health and social services; states that encourage freedom of expression and vigorous exchange of views through a free and thriving media sector; states that pursue sound macro-economic management, institutional reform, and investment in human resources development, including in the critical area of gender equality; states that deal swiftly and effectively with corruption; and states that build an enabling environment for the private sector to generate economic growth, jobs and income. At the core of the capable state are political continuity and policy predictability and a fair and consistent application of the rule of law.

3. Nowhere is the consensus on the need for capable states more clearly reflected than in the New Partnership for Africa's Development (NEPAD), a leadership framework aimed at providing new impetus to continental development efforts. The NEPAD African Peer Review Mechanism (APRM) uses a number of innovative indicators to assess and monitor the progress of African countries in meeting the goals of achieving good governance and sustainable development. So far, 23 countries —covering some three-quarters of the population of sub-Saharan Africa—have signed up for peer review, opening up their policies and practices to scrutiny based on codes and standards for political, economic, and corporate governance codes. The Pan African Parliament, created as part of the African Union (AU), constitutes another important continental institution of accountability and oversight and a critical forum for the exercise of good governance in Africa.

4. While the principles of democracy are universal, the form it assumes is context-specific. As such, Africans must define an African-owned agenda for good governance, based on local realities and contexts, and communicated to populations in their own languages. Viable institutions and practices from the continent's past must be harnessed towards its future. The context of globalisation, coupled with the tendency towards asymmetrical relations between Africa and its development partners—particularly in economic governance and trade—makes it all the more incumbent on Africa to develop its own paradigm of good governance as part of its quest for greater ownership of its development. As such, there is a need to caution against assuming that models borrowed from Western industrialised countries are the best, or only, route to progress.

5. While some may perceive traditional systems of governance as archaic and outdated, there is growing evidence that such systems and networks are key in mediating the dualistic co-existence between tradition and modernity that characterizes African society. As such, traditional governance holds tremendous potential for enhancing the effectiveness of service delivery and ensuring that communities, especially in rural areas, are not bypassed by development. Furthermore, traditional systems of conflict resolution have proven relevant and effective in addressing some of Africa's most enduring conflicts. As such, a key challenge of the modern capable state is to find ways of harnessing the potential of traditional institutions of governance.

Key challenges to good governance in Africa

6. In the first study of its kind to measure and monitor progress towards good governance in Africa, the Economic Commission for Africa (ECA), in collaboration with the African Development Bank (ADB) has identified four positive governance trends in Africa: the steady consolidation of democracy; greater political inclusiveness; expanded voice and accountability; and improved economic management. However, a number of major challenges need to be addressed with a view to building capable states in Africa, some of which are spelled out below.

7. First, the lack of effective checks and balances in some African countries undermines good governance. These relate to the three arms of government, which should be clearly separated and operate independently, but be coordinated. Political parties, civil society, the media also serve as important checks and balances. Problems are particularly evident with regard to the Executive, especially in countries emerging from totalitarian rule, where parliaments tend to enact laws serving narrow factional interests rather than the common good. While elected parliaments are generally mandated to provide oversight, propose and approve legislation, promote and protect government, as well as strengthen its institutions, in some cases, parliaments are either not elected, or are elected without a clearly defined mandate. Related to this, many parliaments lack the required autonomy and financial independence from the Executive. Human resources shortfalls, questions of legitimacy and other constraints affect the ability of many parliamentarians to perform basic functions of office, such as interrogating the national budget.

8. The independence of the Judiciary is central to the administration of fair justice in a democratic society. However, it is often more nominal than real. In some cases, structural biases arising from a range of circumstances undermine the credibility of the judicial system. Justice commissions often merely act as advisers to the Executive, rather than directly influencing decisions. In some cases, the Executive has been known to directly appoint members of their justice commissions. Meritocratic processes of recruitment for the Judiciary are sometimes lacking. More often than not, the Executive controls the process by which the Judiciary is appointed, the security of tenure and the purse strings. Added to this, language and cost remain barriers to access to justice, especially for women and the poor, who are often not familiar with their rights. Disparities also exist between judicial systems in French and English speaking countries, working against regional goals.

9. Political parties are playing an increasingly critical role in the consolidation of democracy in Africa. The challenge remains one of reform to ensure democracy of their internal structures. Parties often serve individual, rather than the public interest. This is evident in the lack of coherent political agendas and programmes, and in tendencies such as vote buying. The funding of political parties remains a major challenge. Many depend on private parties to finance electoral campaigns, particularly in countries where the incumbent party refuses to institutionalise funding for opposition parties. This works against a balanced political representation in parliament. Accountability mechanisms, voter education and requisite codes of conduct for elections are often missing, while electoral commissions are often anything but independent. Many parties have failed in their public education role, focusing instead on interests of wealthy funders. A related challenge is to build complementarity between political parties and NGOs so that both institutions can play an important role in society.

10. Civil society and non-governmental organisations provide the citizenry with a channel for their voices and the means to serve as watchdogs enforcing political accountability. However, many CSOs are often seen as adversarial to, rather than complementary to, government. Civil society attacks on state policies can sometimes undermine legitimate achievements underway. A large number of CSOs operate exclusively as service providers, abandoning an important policy advocacy role. Further, CSOs need to be differentiated based on their transparency and credibility since they are not all operating as independent watchdog organisations and may be opportunistic and partisan. CSOs as well as individuals also suffer from laws that restrict their activities and hamper their rights. Governments also question the legitimacy of human rights movements, thereby undermining their watchdog role.

11. The media also has a vital role to play as a public watchdog—in exposing corruption, checking abuses of power and human rights and casting light on the process of elections, the daily business of government and service delivery. Media organisations must be free from interference, manipulation or pressure so that they can do their work effectively and guarantee the independence of their work for the consumer. This places a particular obligation on government and politicians to respect the media's questions and to give open and honest answers, permit a diverse and flourishing environment for publicly and privately owned media and

respect media workers' freedoms and rights. Yet only a healthy media sector can fulfill its obligations. If media publishers and broadcasters in both the public and private sectors lack financial resources and security, if they do not uphold professional standards, and if they use reporters and editors who are inadequately trained or experienced, they will fail to live up to the standards that underpin public confidence.

12. Second, weak institutions created through political rather than normative processes impact negatively on national and local governance, as well as on participation and the delivery of services. Historically, the civil service has tended to be supply rather than demand driven, lacking of focus on outputs, outcomes and impact, with the result that civil servants lack a full appreciation of their service orientation and mission. They may not be adequately skilled or trained to carry out their duties. Effective delivery of services is often hampered by lack of upstream stakeholder participation, donor imposition on selection of contractors and programme focus. The lack of adequate gender sensitive analysis constitutes a glaring omission that works against an effective approach. Furthermore, growing urban poverty, coupled with rising demand for services in urban slums, represents a new challenge in service delivery.

13. Weak institutions, particularly the Judiciary and Legislature, also stem from inadequate financial and other operational resources, which affect the delivery of services. Furthermore, insufficient human resources reduce the capacity of institutions to influence governance. Poor technical skills also impinge the quality of programme output. In addition, the lack of independence of governance institutions weakens their ability to function effectively and to establish accountability mechanisms.

14. The lack of participation at all levels constitutes a key weakness in governance, and serves to marginalise key stakeholders in development, among them youth, women, and civil society at large. At the local level, institutions for governance and participatory development remain weak, one reason why service delivery scores are low in ECA's governance study. Local government is of extreme importance, because it serves as a major means of empowerment, stakeholder participation, and enhanced accountability. It also is the major coordinator of service delivery and local development efforts between sector agencies, communities, civil society, traditional authorities, and the private sector. Effective decentralisation is contingent on a strong and capable state that can relinquish power effectively to local governments and communities. While most countries in Africa have initiatives underway for decentralisation and local development, the pace of transfer of powers and fiscal revenues remains slow. Often, what are being transferred to the local level are institutional control mechanisms rather than true devolution of power. The objective to mobilise all local and provincial latent capacities for development is therefore not achieved.

15. Devolution of power to the local level involves the integration of three processes: strengthening of local government, reform of sector institutions, and empowerment of communities. It needs to be carefully designed and adapted to the situation in

each country. There is a danger of creating too many tiers of decentralised government and too many districts or provinces, which entails an excessive fiscal cost that poor countries may not be able to afford. There is also the problem of excessively empowering local elites, rather than the entire population, and measures need to be put in place to monitor elite capture and speedily implement corrective measures. Widespread dissemination of information and large scale training efforts are an essential component of a local empowerment strategy, and a key measure to ensure accountability and limit elite capture.

16. Third, while it is generally accepted that traditional systems of governance have much to contribute, the key challenge remains one of finding ways to accommodate these systems into modern statehood. While important, democratisation has failed to meet broad social responsibilities, as it has not been founded on societal values. Three possible models of traditional governance can be cited: the highly centralised or absolute monarchs; kingdoms with limitations on the exercise of powers by the kings; and consensual systems of decision making in which traditional leaders preside over assemblies but there are essentially no chiefs and no significant separation between the rule makers and the ruled. The consensus-based model, while probably the most relevant to democratisation, has no strong advocates within the wider political system for contemporary institution building. There remains a dearth of specific cases studies on how modern political systems in Africa can borrow from this traditional model.

17. In the modern state, elections do not necessarily reflect the will of the people nor always bring the "best" people to power. A further aspect is the incorporation of participatory systems characteristic of traditional systems into structures of representative democracy, while yet another dimension is reconciling the consensual judicial system of traditional governance with the adversarial system in the modern state, dominated by those with the means to justice. Difficulties also arise when chiefs participate in party politics of statehood carrying their traditional support base with them. A further issue is the impact of globalisation and economic change on systems of governance. In general globalisation and economic development require that all stakeholders share responsibility for good governance. Traditional governance systems can play a vital role in strengthening societies to adapt to these changes, as has happened in Japan and South Korea.

18. Fourth, corruption continues to pose a serious challenge in many African countries, undermining the legitimacy of institutions and entire governments, impeding investor confidence and depriving citizens—women and the poor in particular—of essential public services. Although there has been a proliferation of anti-corruption commissions and bureaus across the continent, many lack the autonomy, resources and power to effectively trace and prosecute corrupt individuals at all levels of society. As a consequence, many of the well-intended anti-corruption campaigns tend to fizzle out over time and a culture of impunity and clientelism persists where a culture of performance, meritocracy and transparency is needed. The Judiciary in particular is a key institution in the fight against corruption, but often lacks the independence and capacity to deal expeditiously and effectively with all the cases brought before it. Other important factors contributing to

corruption include insufficient remuneration of public officials, the vast income disparities existing in most African societies, external factors such as bribery by multinational firms to secure lucrative contracts, the ignorance among citizens about their rights, and the erosion of ethical and communal values to the benefit of materialism and acquisitiveness.

19. Fifth, while the private sector is well recognised as an engine of growth and development in Africa, its potential remains largely untapped. Success in creating adequate opportunities for fully productive employment is primarily dependent upon the existence of competitive, profitable and sustainable business enterprises. It is in this context that the good governance of the business enterprise—the wealth creating organ of society—becomes cardinal to the development and governance strategies of the African continent. However, the private sector generally lacks access to human and financial resources, knowledge, markets and labour, impacting negatively on its effectiveness in promoting growth and employment in Africa. Furthermore, it suffers from a lack of dependability and predictability in the management of state affairs—especially the consistent and fair application of the rule of law and the protection of property rights—which are more fundamental to growth and investment than providing tax holidays, investment incentives and subsidies. Many African governments pay too much attention to attracting foreign direct investment (FDI), to the detriment of strategies to support local industries and mobilise domestic investments for sustainable development. There also remain gaps between policy intentions and pronouncements made by some governments and actual implementation.

20. Sixth, the impact of HIV/AIDS as a governance issue has still not been fully understood or recognized. HIV/AIDS reduces economic growth potential and private sector employment opportunities, and erodes the tax base, negatively affecting domestic resource mobilisation. It impacts severely on the ability to deliver services, and diverts resources that could be otherwise deployed toward provision of basic needs and the responsibilities associated with governance. It weakens people's energy to participate in democracy and hold state structures accountable, while burgeoning HIV/AIDS-related stigma and discrimination impacts on the state's ability to protect human rights. The specific socio-economic and biological vulnerabilities of women to HIV/AIDS are not adequately taken into consideration. The HIV/AIDS pandemic highlights the depth and urgency of the governance challenge for Africa's youth. Establishing a sense of positive futures among African youth is essential, not only for HIV/AIDS prevention but also for laying the social foundation for good governance.

21. Seventh, and in spite of African women's mobilisation, advocacy, and increased representation in governance at regional and national levels, normative gains are not yet reflected in substantial changes in women's lives. In fact more women are living in absolute and relative poverty today than ten years ago. Furthermore, and despite 31 countries signing and 4 ratifying the AU Protocol on the Rights of Women to the African Charter on Human and People's Rights, challenges remain. Women's access to the justice system is limited by legal illiteracy, lack of resources and gender insensitivity, as well as by bias among law enforcement agencies. In some coun-

tries, women are denied property rights. The incidence of violence against women, including rape and domestic violence, remains staggering.

An agenda for action

22. Above all, fostering good governance in Africa means building a capable democratic state with strong institutions promoting the public interest and including the participation of all stakeholders, with a particular emphasis on women and youth. Urgent and coordinated action is needed to address capacity deficits in key areas:

23. **Improving Checks and Balances:** Strengthening the capacity of parliaments to perform their key functions constitutes an urgent task. Action is needed to establish a parliamentary index of core areas of intervention, so as to identify capacity gaps, strengthen autonomy and entrench independence. Programmes are needed to build capacity for parliamentarians as well as parliamentary staff in the areas of finance, technology, drafting of legislation, and communication, among others. Internal parliamentary reform must also be promoted to ensure parliamentarians will promote and protect good governance. And existing initiatives to promote inter-parliamentary cooperation need to be deepened.

24. Work is also needed to deepen legal and judicial reforms. Governments need to set up transparent processes for the appointment and dismissal of judges. Governments must invest in capacity building for court officials, as well as in proper remuneration of court personnel to discourage rent seeking. More open and active court systems need to be fostered where files are readily available to solicitors and their clients. By improving access to technology, informed citizens can make informed choices regarding the exercise of their rights, including the right to legal redress. Judiciaries need to be closer to the people by using languages that they understand, tailoring legal access to include the poorest, and raise people's awareness of the laws. This should include steps to support and bolster traditional judicial systems, which are readily accessible to the public. Significant reform is needed of the various institutions of justice. A meeting between chief justices across Africa should take place to develop a blueprint for harmonising policies aimed at entrenching judicial independence. African governments need to comply with international human rights conventions they have signed and ratified, including international instruments aimed at protecting children, advancing the status of women and preventing discrimination against people living with HIV/AIDS. However, they should also encourage independent monitoring of human rights instruments, and demonstrate to citizens that they have rights and freedoms—particularly in expressing their choice in leaders and expressing their opinions. The AU should reconsider its decision to place the African Court for Human and Peoples' Rights under the African Court of Justice as a specialised court, but maintain the African Court for Human and People's Rights as a distinct and separate court. There is a need to develop an African Youth Charter as a means of enshrining the centrality of Africa's youth to governance and development.

25. Political parties require special measures to develop their capacity if they are to efficiently assume a key role in democracy for good governance. This should include

assistance in better understanding national constitutions and electoral laws. Of primary importance is funding which must be addressed to improve their independence, accountability, and organisational structures, reduce parliamentary carpet crossing, mitigate corruption and help parties better assume their function of civil education. The funding of independent electoral commissions should also be deepened so that they can assist political parties to abide by their code of conduct and also provide supervision. The AU and the UN should jointly collaborate to promote free and fair elections in Africa. There is need for further, in-depth consideration of issues of capacity building of political parties, including discussion on defining or refining the ground rules for elections. This should be the subject of a separate conference or African initiative. The role of CSOs and other watchdog organisations in improving checks and balances should be strengthened through the provision of civil education that enhances their effectiveness, particularly in enforcing greater accountability. Measures should be taken to provide training to women to enhance their participation in political decision-making processes.

26. **Strengthening African Media:** African governments should accept an obligation to be transparent and accountable by providing information to the media when it is sought and answering questions about their performance to the best of their ability. They should allow both the private and public media to function without interference and to respect media workers' freedoms and rights without resort to violence, intimidation or detention to curtail reporters' activities. All laws and official practices that curtail or undermine media freedom should be repealed or ceased. Africa's media houses urgently need to address a number of challenges if they are to meet the standards required by good governance. Media owners and editors must ensure that journalists are adequately remunerated, well trained, and can benefit from new technologies, since editorial production, research and communications depend so heavily on access to computers and the Internet. Furthermore, media owners and workers should urgently seek to raise standards in their profession by instituting and where appropriate, supporting key institutions—such as media monitoring and complaints bodies and journalists' organisations. Media owners and practitioners in Africa have an ethical and professional obligation to institute and promote accurate, fair and objective reporting. A charter for African journalism should also be developed and widely disseminated via media networks and associations and, once agreed, widely subscribed to so that media organisations themselves are transparent about their goals and can be measured against them.

27. **Harnessing Traditional Governance Institutions:** Traditional governance structures and systems should continue to enshrine the devolution of power with the ruler subject to laws and codes of conduct. Contrary to popular belief, the selection of leaders is not arbitrary, but based on consultation. However, more accountability must be institutionalised. Leaders installed to rule for life must earn their stay in office through good conduct, or otherwise be subject to removal based on clearly defined mechanisms for accountability. Further, structures for accountability must be institutionalised as part of the modern practice of statehood—such as the creation of houses of chiefs at the district, provincial and national levels. There is also a need to explore the role that traditional systems of governance play as

partners in the socio-economic development of communities. The role of the chiefs in socio-economic development needs to be reinforced at several levels. This includes the creation of community/private/public partnerships and trust funds, strengthening traditional Judiciary systems and addressing the HIV/AIDS pandemic, among other issues. Where relevant, the role of traditional authorities and institutions as custodians of moral and social values should be deepened, and they should be formally represented in AU bodies and other regional development fora. A project to map traditional systems of governance, including their consensual decision making models, should urgently be conceptualised and implemented as part of the broader effort to better define and advocate their role in achieving good governance in Africa.

28. **Tackling Corruption:** There are both short-term and longer-term measures that need to be taken to eradicate corruption across all levels of society. Improving the salaries of public officials is one immediate option for reducing their vulnerability. The use of information technology in public administration (e-governance) can also play a major role in reducing the discretion of public officials by helping to condense the number of administrative steps taken in the completion of an administrative or service delivery process whilst simultaneously enhancing its transparency. At the higher levels of authority, leaders should serve as role models in the fight against corruption by declaring their goods and revenues upon assuming office, talking about corruption openly and publicly, ensuring that budgets at all levels of government are published, comprehensible and accessible to all citizens, and that government procurement practices are both competitive and transparent.

29. Outside of governments, the private sector, including multinational and transnational corporations, needs to become more sensitised and involved in the fight against corruption, corruption, ensuring that the requisite mechanisms for accountability are in place. A strong alliance is also needed between CSOs, the media, political parties, the Judiciary, the Legislature, the churches, traditional institutions and progressive corporations, to monitor and denounce corrupt practices, inform the citizens of their rights and duties, and promote the values of integrity, accountability and honesty in society. At the regional and international level, institutions such as the AU and other international organisations need to encourage the enforcement of laws and exchange of best practices in the fight against corruption.

30. **Reforming the Public Sector, Institutions of Local Governance and Improving Service Delivery:** In terms of public sector reform, governments must improve the quality of information available to citizens, and bear in mind illiteracy levels as well as African languages. Institutions should also endeavor to sensitise all employees about the service orientation of their jobs. Institutions should work to simplify procedures for citizens inquiring and accessing government services. Public sector providers should be placed on performance contracts and have their budgets increased only if they satisfactorily meet their targets. Private-public partnerships and privatisations should also be considered, as appropriate.

31. To improve delivery, services should be more targeted at beneficiaries, allowing them to participate more fully in decision making, bearing in mind the specific needs

of women and the poorest. Where private sector provision of services is working, it should be supported and continued, with NGOs enlisted to monitor and evaluate impact. Where they exist and add value, local governments should delegate responsibilities to traditional institutions. A serious shift of attention toward the new challenges of urban poverty should take place immediately in anticipation of mushrooming needs and demands. Institutional decentralisation should be adapted to country specific conditions and human resources. It should be carefully planned so that it effectively devolves powers and fiscal resources and authority to the local level. The risks of excessive administrative costs and of elite captures need to be mitigated by making the local institutions truly accountable to the population, and by widespread dissemination of information, training and careful monitoring and evaluation. Special measures must be put in place to ensure participation of women, youth, ethnic minorities, and vulnerable groups.

32. **Leveraging ICTs:** E-governance, which incorporates the principles of e-government, is an important innovation for enhancing good governance and strengthening the democratic process, and can also facilitate access to information, freedom of expression, greater equity, efficiency, productivity growth and social inclusion. Successful e-government initiatives can have demonstrable and tangible impact on improving citizen participation and quality of life as a result of effective multi-stakeholder partnerships. African governments need to develop appropriate policy frameworks, supported by legislation for e-governance, that are linked to strategic development objectives; enlist high-ranking political e-government champions; focus awareness, outreach and training efforts on the less privileged segment of targeted users, particularly women and neglected rural communities; and promote local content and supports local language development. Governments need to adopt legislative and regulatory measures on free open source software use in African public administrations in order to reduce the dependence on restrictive and expensive proprietary software. They should also support research and development institutions and bodies in their effort to develop appropriate e-government systems and applications for Africa.

33. Improving governance in Africa is ultimately a national project. As such, a participatory political process that allows political freedom and human rights, the unfettered operation of the media and civil society, the institutionalisation of languages understood by African populations, and the promotion of private sector development and e-government is key. In the area of ICTs, for example, the African Information Society Initiative (AISI) advocates the implementation of National Information and Communication Infrastructure (NICI) plans in each country and has stipulated the need for government to promote the deployment and use of ICTs within their administrative structures, including support for e-governance. In terms of partnerships, national parliaments are responsible for passing legislation to promote environments that are conducive to the success of e-government. Furthermore, the RECs should also promote the implementation of e-government systems among their member states through adequate policy and regulatory environments. International agencies and donors, such as l'Organisation Internationale de la Francophonie, and other entities, should provide increased financial resources and capacity building to support e-government initiatives at all levels throughout Africa.

There is a need to organise various fora to raise awareness on the relevance of e-governance to development, as well as to develop an inventory.

34. **Unleashing the Potential of the Private Sector:** This calls for the creation of an enabling environment through effective partnerships between the government, the private sector, and civil society to enhance the spirit of participatory development and increase citizen engagement in creating a secure and stable environment in which corporations can grow and thrive. NEPAD advocacy for pro-active public–private dialogue and partnership in areas such as infrastructure and e-governance is therefore timely. It will, however, involve heavy investment in labour at all levels and mutually beneficial business relationships at the continental and international levels to attain the goals of creating strong African private sector associations that reach out to state and non-state small and medium enterprises (SMEs); more focused and integrated public–private-CSO partnerships in sponsoring home-grown national and regional development strategies; promoting reliable and dependable information and analytical interfaces between the African private sector, international business and capital, and the NEPAD Secretariat; having timely, credible, structured, comprehensive and usable information on business opportunities to advance private sector development; and promoting regional integration efforts more focused on building productive capacity, as opposed to an overemphasis on trade. Given that SMEs account for close to 90% of African enterprises, they constitute a pivotal sector for providing the continent's youth with creative employment opportunities. There is an urgent need to organise an Africa-wide forum on the role of the private sector in development, to include chambers of commerce, stock exchanges, business associations and other key players.

35. Governments can overcome existing constraints by promoting good corporate governance, developing genuine partnerships with the private sector, underpinned by strategies to effectively utilise the considerable resources of African women, and harnessing regional integration to expand trade and access to markets. Advocacy work and education programmes are needed to promote the private sector as an engine for growth. National task forces should be formed to translate standards of corporate governance, such as those developed by NEPAD, the Africa Business Round Table, the Organisation for Economic Cooperation and Development (OECD) and the Commonwealth, among others. Relevant regional institutions should provide training to formal, informal, small and medium scale enterprises on corporate governance and social responsibility, and subregional hubs and networks should serve as conduits for knowledge sharing in this area. Consumers should ensure that they get value for money, obtain the highest quality products and be able to trust and rely on the enterprise to supply the goods or services timely and cost-efficiently. Investors and shareholders should be confident that their investments are secure, productive, sustainable, growing and profitable with a full protection of their rights. Suppliers, contractors, lenders and financiers should ensure that enterprises are well run and governed, and remain viable and solvent. Finally, employees should ensure that enterprises remain viable, sustainable and able to secure jobs, wages and pensions.

36. **Fighting HIV/AIDS as a Governance Issue:** Fighting HIV/AIDS in Africa implies an urgent recognition of its devastating impacts on governance, as well as

concerted and coordinated action to mitigate its effects. In the next ten years, Africa could lose over ten million of its work force if urgent actions are not taken. Ongoing initiatives, such as the Commission on HIV/AIDS and Governance in Africa (CHGA), should be supported while national governments must develop practical but effective strategies to combat the disease. Organisations like UNAIDS, CHGA, and WHO need to better coordinate their efforts and work in collaboration with the AU, subregional organisations and national governments in evolving a common workable strategy to arrest the spread of the disease and provide adequate treatment for people living with AIDS.

37. Actions should include: the institution of workplace prevention programmes as well as new methods of workplace planning, including the creation of a more favorable work environment with pay rises and other incentives to attract employees and retain them; identifying and working with the best available actors through outsourcing; de-skilling certain functions so a broader range of people can provide services, such as in the context of health workers; integrating HIV/AIDS interventions into existing wider development programmes; and reviewing overall laws that relate to the well-being and protection of those affected by HIV/AIDS, such as anti-discrimination laws and property rights protection. Vulnerable groups, women and youth should be more involved in programme planning at all levels, particularly the community level.

38. Related to treatment, governments should operate from the basic premise that "the right to life" is enshrined in most, if not all constitutions and that free access through the public health system is everybody's right. Treatment and prevention need to be combined in the fight against HIV/AIDS. It is important that governments promote access to treatment of People Living with HIV/AIDS (PLWA) by complementing the 3x5 initiative with simplified regimes of drugs based on local resources. Increased access to treatment should be met with mobilisation of domestic resources and also an increase in aid flows that is more targeted and predictable for African governments to be able to manage. Urban areas tend to be favoured over and above rural areas in terms of access to treatment. Improving health infrastructure is therefore critical for upscaling of HIV/AIDS treatment and providing access to treatment in rural areas. Stigma and denial remain key barriers to addressing HIV/AIDS effectively. Political will needs to be complemented by programmes that address stigma and denial by involving PLWA, emphasising the role of leadership, and providing consistent and accurate information. Legislation also needs to be adapted/ aligned to the imperative of protecting the rights of PLWA.

39. **Mainstreaming Gender Concerns:** All political and governance bodies must institutionalise policies that guarantee gender equality. The AU 50:50 gender parity principle must be replicated and implemented at all levels of governance, national, regional and local. Leadership training programmes for women, especially young women, should be developed and supported to enable them to rise to the challenges of elected or appointed office. Independent women's organisations should continue to be encouraged and supported. All international and regional human rights instruments need to be incorporated into national policies. All remaining countries must sign and ratify the Protocol to the African Charter on Human and Peoples' Rights

on the Rights of Women. The highest consideration must be given to the statement arising from African Beijing + 10 Review. Further, a gender-sensitive and human rights-based approach should inform planning, implementation, monitoring and evaluation of PRSPs, MDGs, and expenditure frameworks. Partnerships between men and women in addressing practices that have a negative impact on gender equality should be developed.

40. **Building Strong, Effective Partnerships within Africa:** First and foremost, and in line with the shared aspiration to develop an African-owned agenda for good governance, work is needed to strengthen existing regional institutional partnerships. Among these is UNDP's the African Governance Institute (AGI), a welcome development. The institute should coordinate knowledge sharing, the mobilisation of human and material resources for agencies involved in governance projects on the continent. This includes research and policy institutes, national, regional and international organisations. Organisations such as ECA, ADB, the African Capacity Building Foundation (ACBF), Council for the Development of Social Science Research in Africa (CODESRIA), the Development Policy Management Forum (DPMF), and the Organisation for Social Science Research in Eastern Africa (OSSREA)—all undertaking work related to African governance—should benefit from the institute, while the institute may also launch new creative initiatives on governance in Africa.

41. Tracking and monitoring good governance in Africa is of paramount importance. As such, all organisations and governments on the continent should actively support the APRM. Institutions involved in the technical and logistical processes of its actualisation, such as the AU, ECA and the African Development Bank (ADB) should work closely to ensure its smooth operation. African governments should ensure that there is national ownership and participation in the APRM through the active involvement of the civil society and the people in the national process. The APRM process, along with the national dialogues conducted as part of the ECA governance project, constitute important innovations.

42. Capacity building of governance institutions such as parliaments, the civil service, Judiciary, political parties and civil society is key to improving governance in Africa. Africa's international development partners should generously support the creation of an African Capacity Building Trust Fund. The initiative by the African governors of the World Bank to create a Partnership for African Capacity Building (PACT) in 1998 should be revisited in support of this new idea. Africans should manage the Fund, and set its priorities for capacity development. All of Africa's Regional Economic Communities should be better integrated into the process of capacity building, improving governance and building capable democratic states. They should set complementary standards on good governance and democracy in line with that of the AU and NEPAD, and work closely with the ADB, ECA, UNDP, and other relevant organisations in developing the institutional capacity of their member states on governance. The rationalisation of regional institutions is necessary for their effective operation and coordination in promoting good governance on the continent.

43. Partnerships can also be forged with institutions and networks that focus on pillars of governance, such as the African Parliamentary Union, African Parliamentarians Against Corruption, African Association of Ombudsman, the Parliamentary Forums and the Electoral Commissions of the RECs, the Electoral Institute of Southern Africa, African Human Rights Commission, the regional Local Government Associations, the African Women Parliamentarians and African Youth Parliament. Building alliances around such institutions will help to deepen governance principles and standards and build consensus on best practices. Such coalitions help to reinforce commitment and encourage experience sharing. Building upon private sector networks such as the African Chamber of Commerce, African Business Round Table, African Capital Markets Forum and the African Stock Exchange Association could promote a culture of good corporate governance and help develop small and medium enterprises, stock exchanges, and the informal sector. Partnerships between national, subregional and continental CSO umbrella groups will also serve to strengthen their collective influence on policy and decision-making. Undertaking an inventory to organise the activities of partners so as to harmonise programmes and maximize resources can also strengthen partnership.

44. **A Transformed International Partnership:** Rule of law, the separation of powers, the role of civil society, and transparency are paramount to good governance in Africa. These are precisely the kind of issues that homegrown initiatives like NEPAD and the APRM are designed to tackle. Given that NEPAD is a compact between Africa's leaders and its people on the one hand, and international development partners on the other, the principle of mutual accountability is key as a basis for structuring international relationships in a globalising world in which interdependency is inevitable. The HIV/AIDS pandemic, environmental degradation, corruption, international terrorism, among many other issues, are common problems that require common solutions. In resolving these problems, our development partners clearly have to bear their part of the responsibility.

45. Mutual accountability is therefore aimed at monitoring progress on both sides. Africa's development partners should fulfill their long-standing commitments to deliver on volume of aid (the 0.7% target). Private capital flows towards Africa have also been low. Moreover, much of the FDI flowing into the continent has been associated with privatization programmes, and has not necessarily been brought about any increase in real investment. European Union and U.S. policy on agriculture has been a great disappointment for African countries, and a source of constant frustration. Low commodity prices and high levels of debt payments have caught many African countries in a trap. The Highly Indebted Poor Countries initiative has not succeeded in delivering the expected faster, deeper debt relief, and needs to go much further. Donors need to establish long-term partnerships with governments – the very low predictability of aid flows impedes planning by ministries. In view of the envisioned scaling-up of aid flows in the coming years, this last issue will be of vital importance in the near future. Africa's development partners should provide support to the continent's development by facilitating freer and fairer terms of trade, greater market access and debt relief.

46. At the same time, Africa must put its own house in order. Establishing mechanisms for tracking compliance on both sides is crucial. There is particularly a need to develop capacities in the management of public resources through effective management structures and systems. The APRM is a fundamental initiative in this respect. African countries are opening up in an unprecedented fashion, unleashing the energy of the whole society. Good governance requires that this energy be channeled towards promoting more effective development and the common good. However, the concept of good governance should not be restricted to the domestic arena. Indeed, many improvements for Africa are contingent upon changes in the international financial and political architecture. In areas such as trade or finance, international global governance needs to be improved. Africa requires more involvement in global decision processes and forums such as the World Bank and the Security Council of the United Nations. The role of the AU also needs to be strengthened. The AU embodies the ambitions of African states to form an integrated, active, actor on the world stage and achieve our long-standing goal of regional integration. But capabilities, especially financial ones, are lacking. External support to help this is clearly required. Finally, in order to facilitate the rebirth of African civil, political and economic society, African countries need to build on traditional culture and religion, and the donor community should recognise these as viable alternatives to their own forms of governance.

Annex 2
ECA Project on Good Governance

The United Nations Economic Commission for Africa (ECA) conceived of this project in the late 1990s in response to the emerging consensus that good governance is central to Africa's development agenda and progress, as well as to the growing demand for sustained improvements to Africa's governance situation.

The project has been conducted in three phases; by the end of 2003 it encompassed 27 countries:

Benin, Botswana, Burkina Faso, Cameroon, Chad, Egypt, Ethiopia, Gabon, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Senegal, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

Plans for 2004–06 include adding some 12 additional countries to the study.

Project groundwork

In order to conceptualise the project, ECA convened a series of workshops in 1999, tapping expertise from within the continent and outside, consulting widely with relevant universities, research institutions and organisations, such as the Organisation for Economic Co-operation and Development (OECD), the United Nations Development Programme (UNDP), the African Development Bank (ADB), Organisation of African Unity (OAU) and many others with the following objectives in mind:

- To agree on the components of good governance, in all its dimensions, taking into account the disparate cultural, historical and other sociopolitical factors across the African continent. A call for the development of a list of qualitative and quantitative indicators to measure governance emerged.
- To establish criteria for measuring and monitoring governance in the face of the disparate historical, sociopolitical and economic disparities among African states. The need to create a dynamic mechanism for periodic cross-national assessment of the performance of African states thus became a central element to the advancement of good governance on the continent.

- To identify ways and means to create and sustain Africa's ownership and commitment to good governance norms and practices in the context of African realities. Consensus building among the various stakeholders, especially between civil society and the state, was deemed essential.
- To build research capacity in the area of governance.

Methodology

A research instrument with three components was designed to obtain information on the state of governance in Africa, as reflected by the political, economic and social affairs in each country. The three research components consist of:

- An opinion-based study using a national expert panel comprising a group of 70–150 national experts across project countries. In each of the 27 project countries members of the expert panel were carefully drawn to ensure representation with regard to age, social status, education, field of training, political orientation, ethnic, regional and religious background and gender, as well as representation from the private sector and civil society organisations.

  The research instrument was in "cafeteria" format, and it was formulated and fine-tuned by distinguished groups of experts on Africa in conferences held at ECA in September 1999, March 2000 and April 2001, and then subjected to a pre-test in Benin and South Africa before the final project launch in October 2001; the subject matter of the research included political representation, which included the political system, distribution of power, political party freedom and security and the credibility of the electoral process; institutional effectiveness and accountability, which included the effectiveness of the three branches of government, with some emphasis on the executive branch; human rights and rule of law; civil society organisations, which looked into their independence, operational environment and their effectiveness; and economic management, which looked into investment policies, the tax system and the impact of corruption. Once collected, the data from each expert panel study were further subjected to rigid quality control to ensure that they were consistent and reliable.

- A national sample survey using a stratified two-stage probability sample ranging from some 1,300–3,000 households across Africa to represent a cross-section of the population (such as rural and urban, poor and middle-class, the educated and the illiterate) to gauge perceptions of principal national problems and the accessibility, adequacy and efficiency of government services.

  The questionnaire for the national household surveys was also in closed form, and it was jointly designed by experts at ECA and by external partners who have had rich research experience in related studies in several countries. However, the implementation of the national household surveys was left entirely to research collaborators in each project country, but ECA undertook close quality control to ensure that all household surveys had national coverage and were sound in scientific design and implementation.

The household sample survey in each project country was carried out either in close collaboration with the National Statistical Office or with the principal sampling experts of the same office to ensure that the survey project utilised the official sampling frame, the official stratification and the overall official survey infrastructure in order to enhance the credibility of the final outcome of the sample survey at all places and at all levels. Consistent with sound scientific survey practice, details on sampling methodology, measures of error, copies of all research instruments and other relevant information are provided in appendices of all country reports.

- Desk-based research of factual information and hard data to supplement and complement the expert panel perceptions and national household surveys.

Calculating the indices

The indices are based only on the data from the expert panel study, which contains 83 indicators clustered by ECA subject matter professionals. Some subindices are not mutually exclusive.

The overall index is calculated using all 83 indicators for each project country. There is no input from other countries in the overall index of any one country. Each reflects the perceptions of opinion leaders in each country. Each governance index is constructed using average scores which are put together and rescaled to bring each of them to a common range of 0–100 using the following approach:

Let
T_i = sum of the mean scores of the indicators in cluster i, i= 0, 1, 2, ...,C, where C is the total number of clusters in the study.
K_i = the number of indicators in cluster i, i= 1, 2, ...,C
G_i = Index of governance based on cluster i, i= 0, 1, 2, ...,C.

Then, G_i , i = 0,1,2,..., C, the index of governance for the ith cluster, follows as:

$$G_i = \frac{T_i - K_i}{K_i\,(s-1)} * 100 \;=\; \frac{T_i - K_i}{4 * K_i} * 100 \quad , \quad i = 0, 1, ..., C$$

where K_0 = 83, T_0, is the total of the average scores for all indicators in the study,

$$G_0 = 100 * \frac{T_0 - 83}{332} \;= 100 * \sum_{i=1}^{C} w_i G_i \quad , \quad w_i = \frac{K_i}{\sum_{i=1}^{C} K_i}$$

and s, which is 5 in the Africa Governance Project, is the maximum possible score that is assignable in any one of the 83 indicators, so that the corresponding Overall Index of Governance will also be given by:

The weighted average formula is valid only if the C clusters are strictly mutually exclusive and exhaustive. An index that is close to 100 is perceived to reflect good governance; almost all indices in this *African Governance Report* relate to 2002.

The data from the expert panel study are used to construct 23 subindices of governance for clusters of indicators. Each governance index is constructed using average scores, which are put together and rescaled to bring each of them to a common range of 0–100. The method of construction is simple and easy to understand. An index that is close to 100 reflects good governance as perceived by the respective national opinion leaders of the country concerned. Cross-country comparisons should be avoided since there are serious factors that negate the validity of such comparisons.

Clusters for index construction

Political representation

Political system Democratic pluralism, executive formation mode, parliamentary election mode, decision participation mechanism, democratic framework acceptance, electoral system credibility

Power distribution Parliamentary election mode, regional assemblies membership, local assemblies membership, constitutional checks and balances status, legislature's independence, legislature's control, judiciary's independence

Political party freedom and security Parliamentary election mode, regional assemblies membership, local assemblies membership, decision participation mechanism, democratic frame work acceptance, electoral system credibility, electoral authority's legitimacy, election security, public media access

Electoral process independence and credibility Electoral system credibility, electoral law credibility, electoral authority legitimacy, electoral authority's fairness, election security, public media access, election transparency, election control

Institutional effectiveness and accountability

Legislature's effectiveness Constitutional checks and balances status, legislature's independence, legislature's control, parliamentary debate relevance, parliamentary opposition strength, legislature's corruption status, judiciary's independence, executive's independence

Judiciary effectiveness Legislature's independence, judiciary's independence, judges appointment mode, court access, justice access, judiciary's corruption status, executive's independence

Executive's effectiveness

Management of state structure Legislature's independence, judiciary's independence, executive's independence, senior appointees' composition, executive's corruption status, civil service accountability, government accountability, government

services' efficiency, local government accountability, resource allocation, local government capacity, government responsiveness

Civil service transparency, accountability and accessibility Civil service management criteria, civil service accountability, civil service perceptions, government accountability, government transparency

Efficiency of government services Government services' efficiency, access to government services, services' relevance to poor, services' relevance to women, local government accountability, resource allocation, government responsiveness

Decentralisation of structures Local government accountability, resource allocation, local government capacity, community participation, government responsiveness

Human rights and rule of law

Respect for human rights Decision participation mechanism, democratic framework acceptance, court access, justice access, respect for human rights, human rights reporting effectiveness, human rights violations reporting, women's rights violations reporting, actions against human rights violations, actions against women's rights violations, effectiveness of watchdog organisations

Respect for the rule of law Constitutional checks and balances status, leadership's respect for rule of law, police respect for human rights, citizen's confidence in law enforcement organs, monitoring violations by police and prisons, civil society organisations' monitoring of violations by police and prisons, penalty for violations of human rights by police, participation in conflict resolution, watchdog organisations independence from executive, enabling government practices and policies, tax system equitability, tax system influence on local investment, tax system influence on foreign investment

Law enforcement organs Law enforcement officials' recruitment criteria, police force composition, police training, police equipment, watchdog organisations' independence from executive, effectiveness of watchdog organisations

Civil society organisations and media independence

Civil society organisations' independence, civil society organisations' role in conflict management, civil society organisations' influence on policy and programs, civil society organisations' role in promoting accountability and transparency, mass media independence

Economic management

Investment policies attractiveness Enabling support for private sector, government support for private sector, enabling environment for private sector, private sector participation in policymaking, enabling government practices and policies, effect of crime on business, partnership of private and public sectors

Pro-investment tax policies Government services efficiency, enabling environment for private sector, tax system influence on local investment, tax system influence on foreign investment, tax system influence on business

Tax system efficiency and corruption Tax system equity, tax collection efficiency, tax evasion, tax collection corruption, tax system transparency

Control of corruption

Legislature's corruption status, justice access, judiciary's corruption status, executive's corruption, government services' efficiency, access to government services, tax collection corruption

Country	Research Institution
Benin	Cellule d'Analyse de Politique Economique
Botswana	Botswana Institute for Development Policy Analysis
Burkina Faso	Centre pour la gouvernance Démocratique
Cameroon	Centre d'Etudes et de recherche en Economie Gestion
Chad	Recherche & Actions pour le Développement Société Anonyme
Egypt	Faculty of Economics and Political Science, Cairo University
Ethiopia	Regional and Local Development Studies, Addis Ababa University
Gabon	Institut Sous-Régional Multisectoriel de Technologie Appliquée de Planification et d'Evaluation de Projets
The Gambia	University of The Gambia
Ghana	Ghana Center for Democratic Development
Kenya	African Center for Economic Growth
Lesotho	Institute of Southern African Studies
Mali	Koni Expertise
Malawi	Center for Social Research
Mauritius	Stra Consult
Mozambique	Centro de Estudos Estratégicos e Internacionais do Instituto superior de Realçoes Internacionais Center for Strategic and International Studies
Morocco	Centre Africain de Formation et de Recherche Administratives pour le Développement
Namibia	Multidisciplinary Research and Consultancy Center
Nigeria	Development Policy Center
Niger	Cabinet d'Etudes, de Recherches, Conseils, Analyse et Prospective
Senegal	Institut Africain pour la Democratie
South Africa	The Institute of Democracy in South Africa
Swaziland	Uniswa Consultancy and Training Centre
Tanzania	Department of Political Science and Public Administration, University of Dar es Salaam
Uganda	Center for Basic Research
Zambia	Centre for Policy Research & Analysis
Zimbabwe	Southern African Political Economy Series Trust

Project implementation

Preparation and pre-testing of research instruments

The preparation of the research instruments was completed by mid-2001. The instruments were then pre-tested in Benin in August 2001 and South Africa in September 2001. As a result, minor modifications were made to ensure validity and technical soundness.

Selection of collaborating institutions

Only national organisations were considered to conduct the studies. Capacity assessment missions were undertaken to identify research institutions to partake in a highly competitive bidding process, which resulted in the selection of a single collaborating partner or consortium per country.

Pre-launch workshops

Selected research institutions were invited to a three-day pre-launch workshop at ECA in August 2002 and another in May 2003 to familiarise them with the methodology to ensure cross-national comparability of research implementation and to agree on the work plan for each country based on a master work plan proposed by ECA.

National launch workshops

Each country held a National Launch Workshop with representatives of government, civil society and other stakeholder groups to introduce the project, promote a suitable implementation environment and ensure the development of national ownership.

National country reports

The collaborating institutions collected the data, obtained ECA's quality control clearance, analysed it and produced a National Country Report. ECA provided technical oversight to ensure conformity with its detailed instructions and agreed-upon work plans and report formats and reviewed the final results.

National stakeholder and subregional workshops

The National Country Reports were presented at National Stakeholders Workshops in each country and subsequently at three subregional workshops (North Africa and the Horn, Southern and Eastern Africa and West and Central Africa) during November and December 2003.

Collaborating research institutions

These are the institutional partners at the country level which implemented the in-country surveys, prepared the country governance reports and facilitated the national stakeholders consultations in the 27 countries covered by the ECA Project on Measuring and Monitoring Progress towards Good Governance.

Annex 3
African governance indicators

Figure 1 Benin

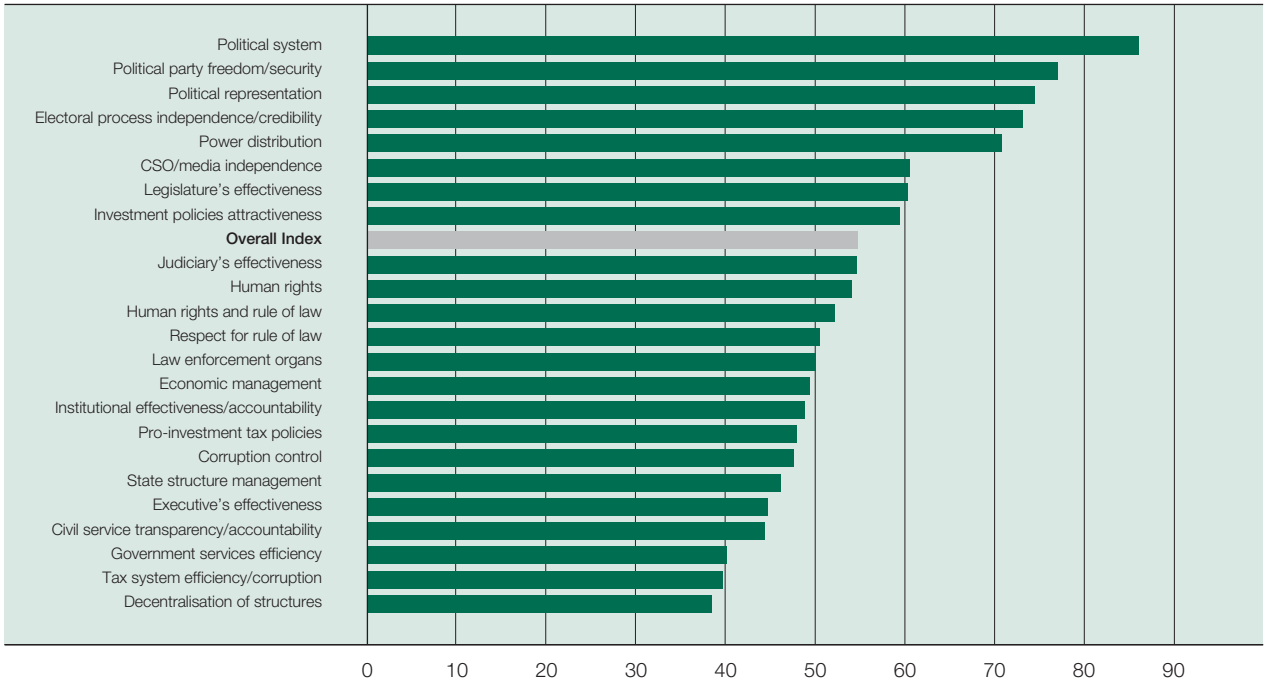


Figure 2 Botswana

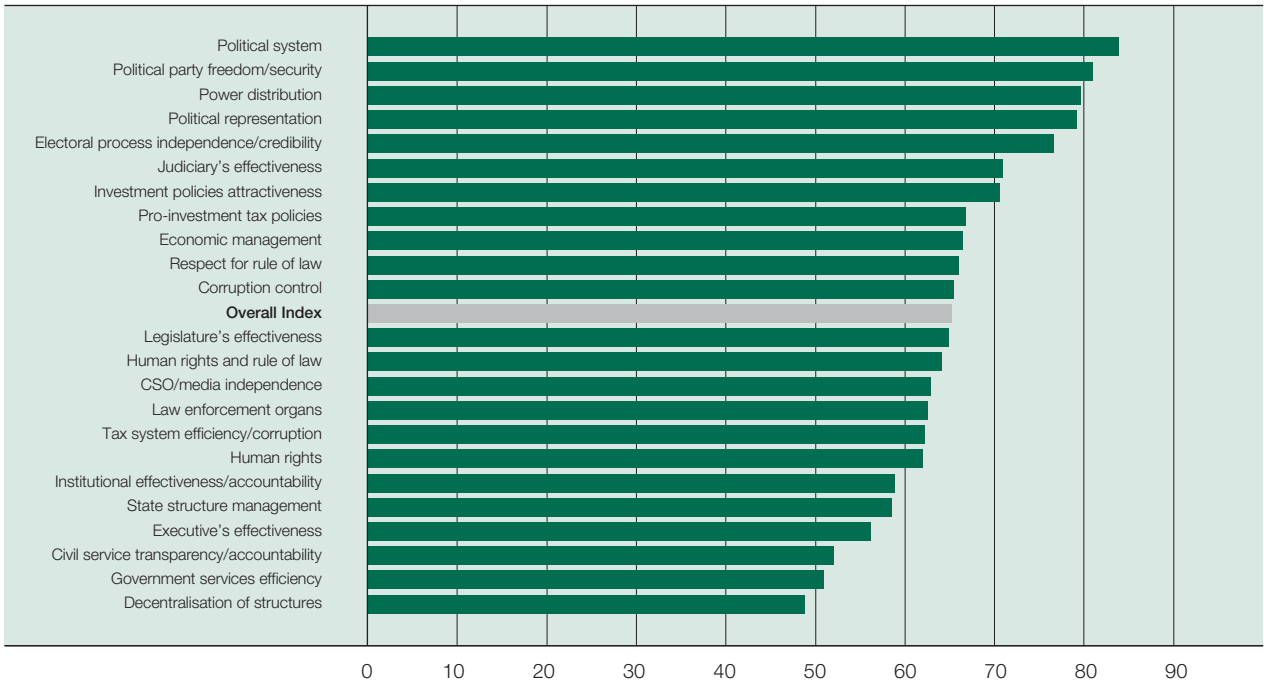


Figure 3 Burkina Faso

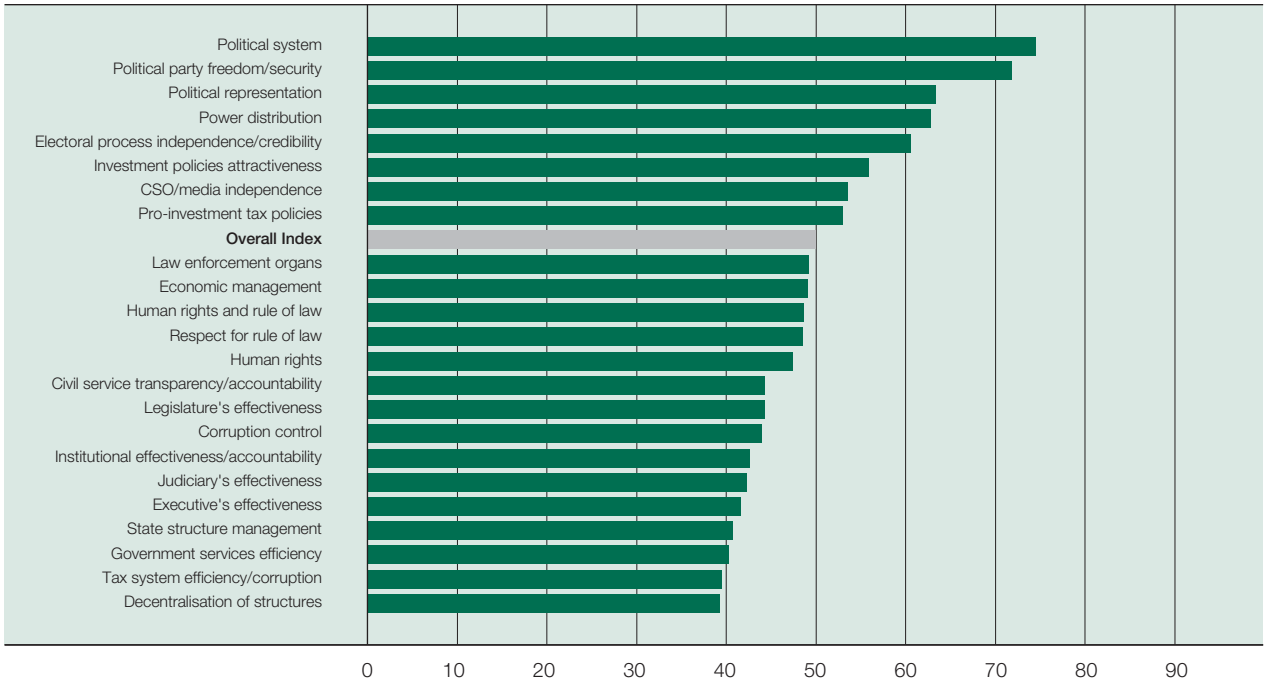


Figure 4 Cameroon

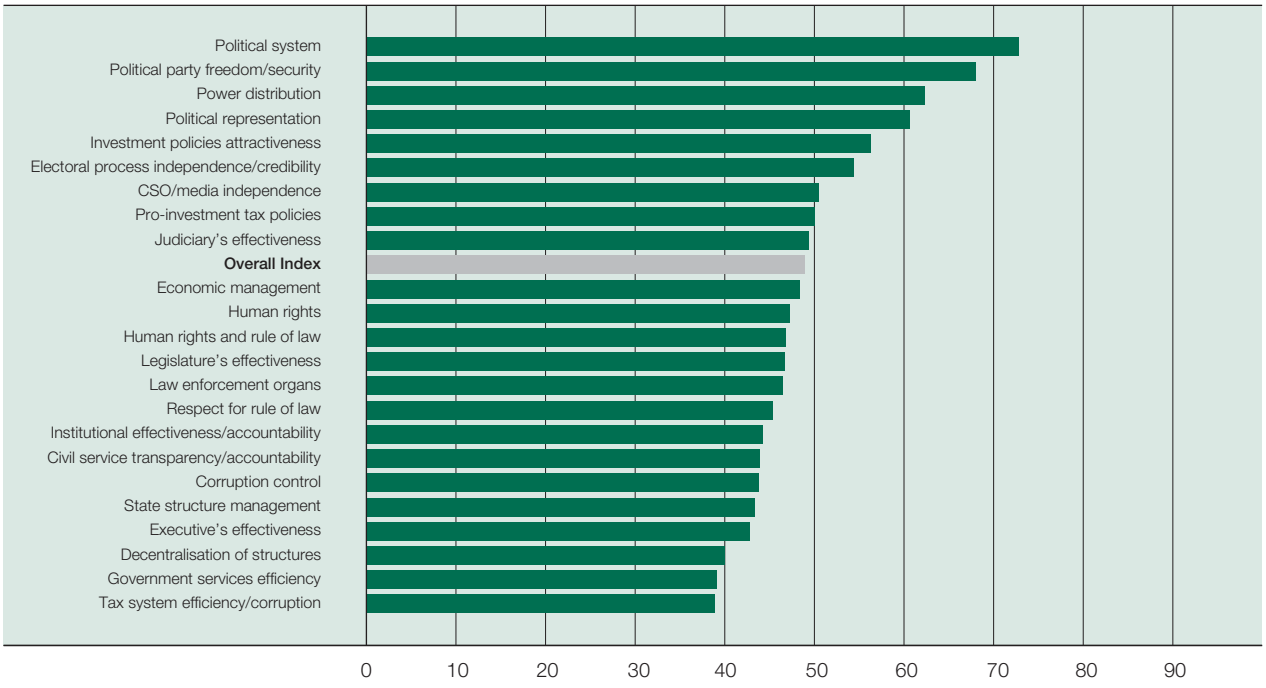


Figure 5 Chad

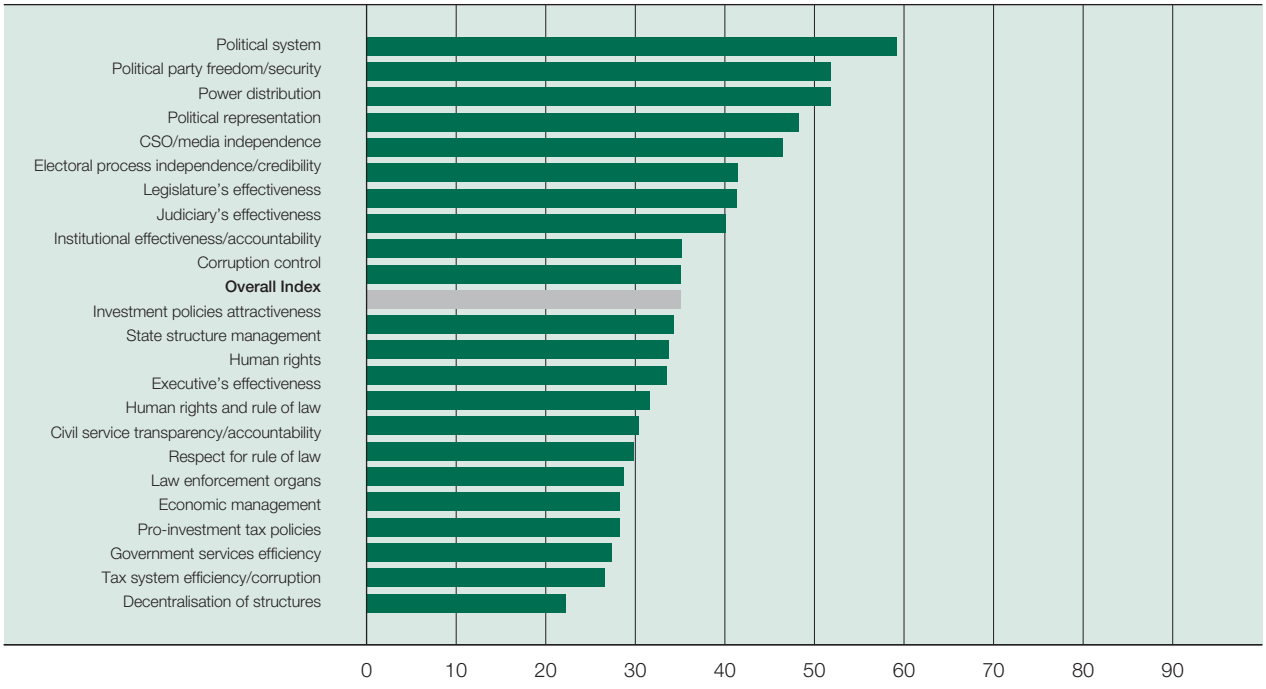


Figure 6 Egypt

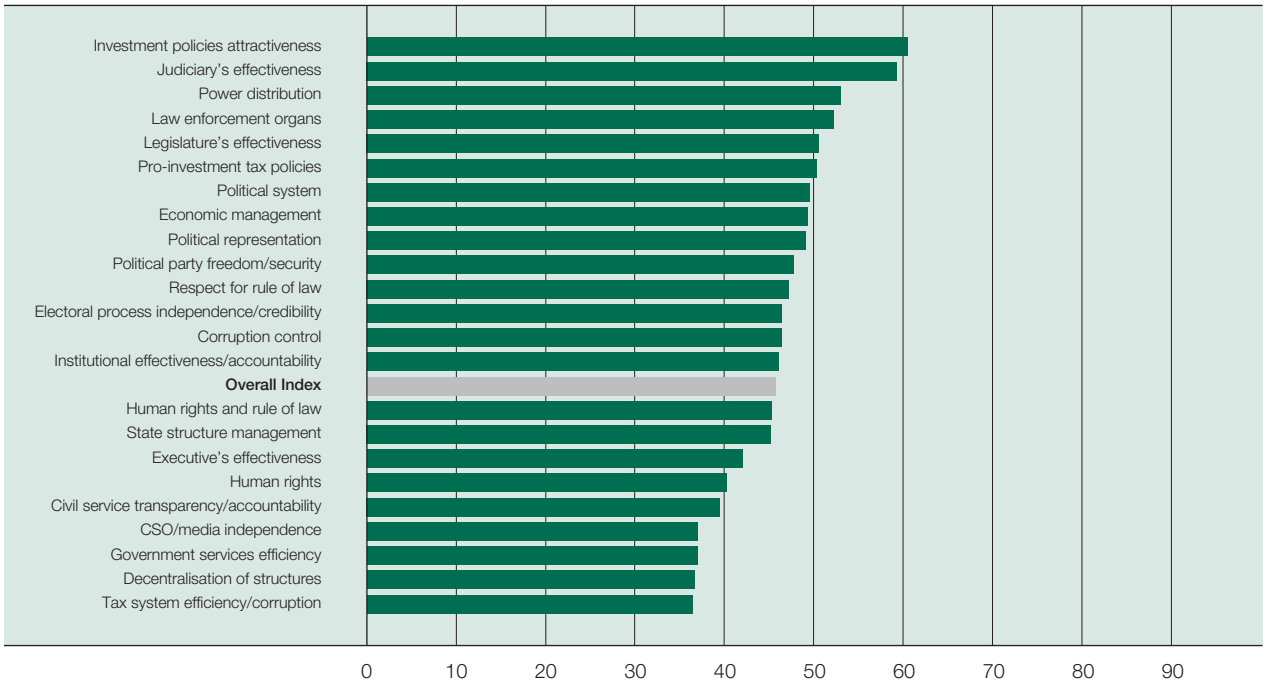


Figure 7 Ethiopia

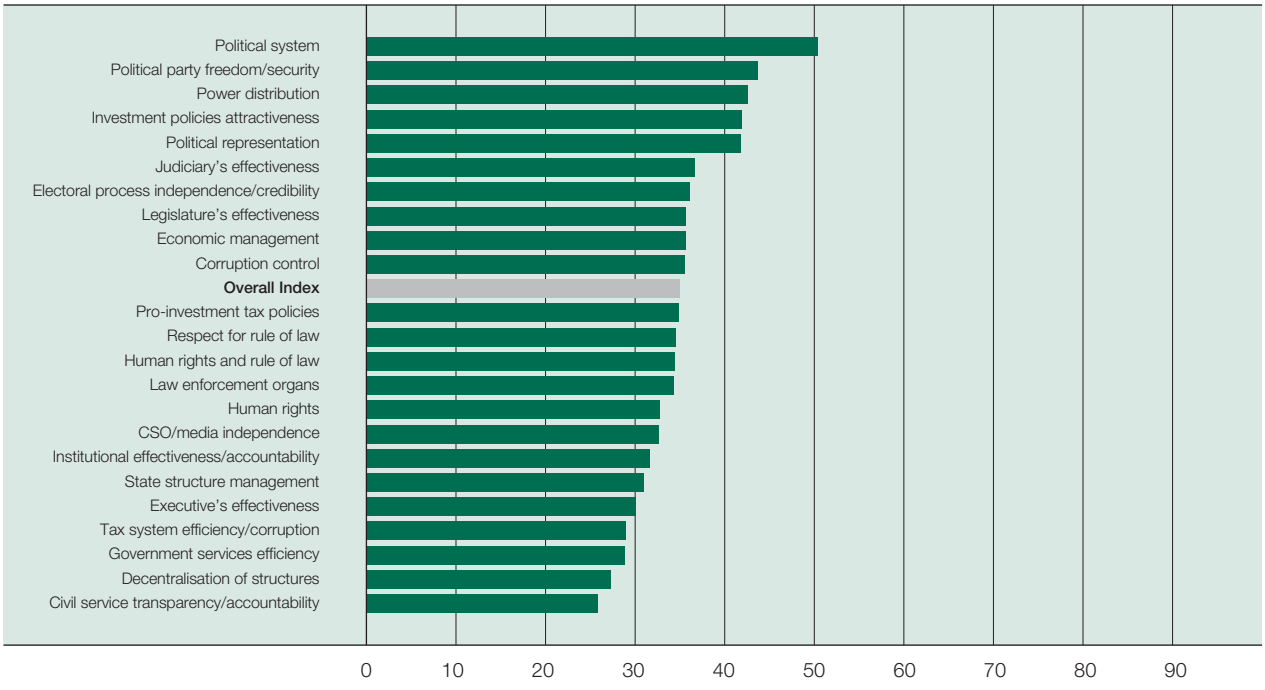


Figure 8 Gabon

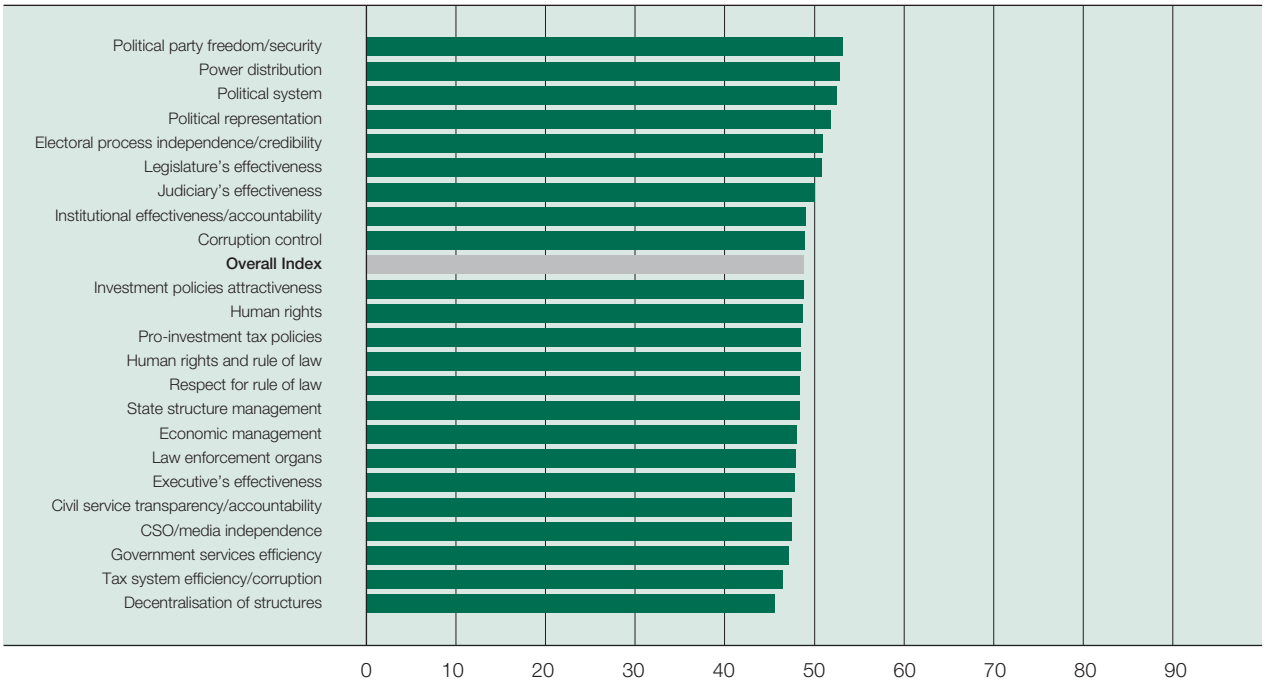


Figure 9 The Gambia

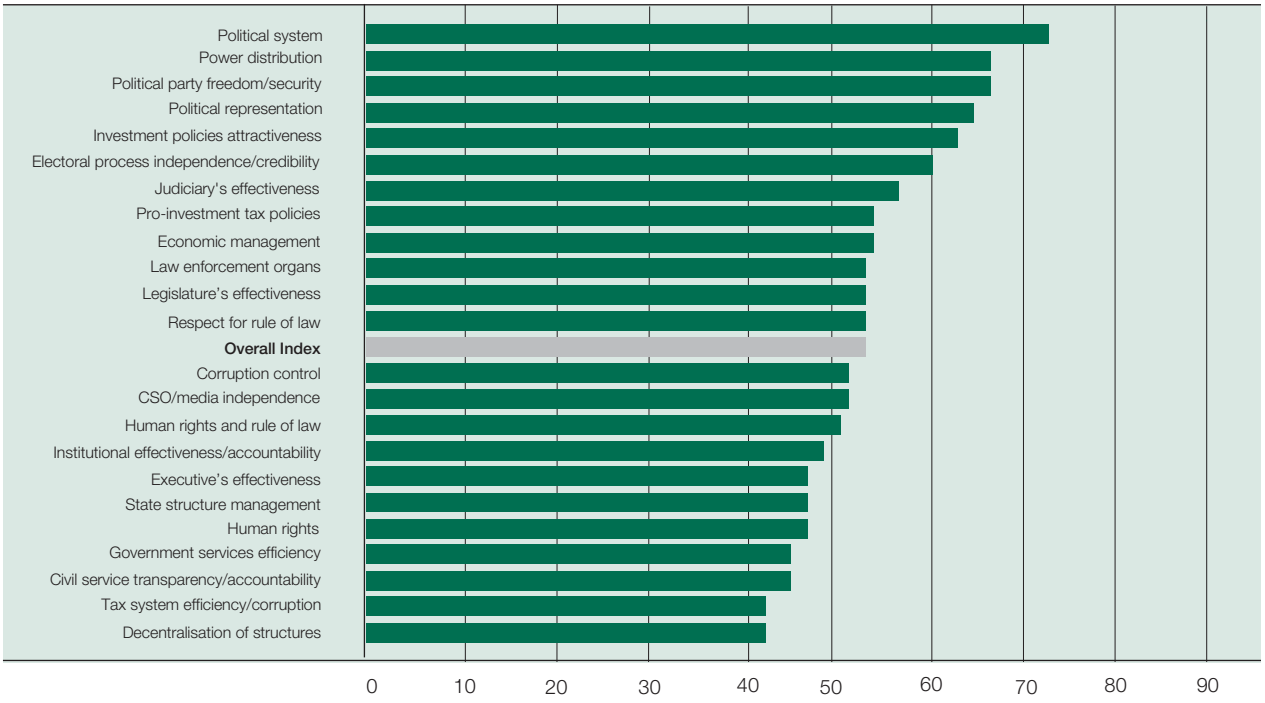


Figure 10 Ghana

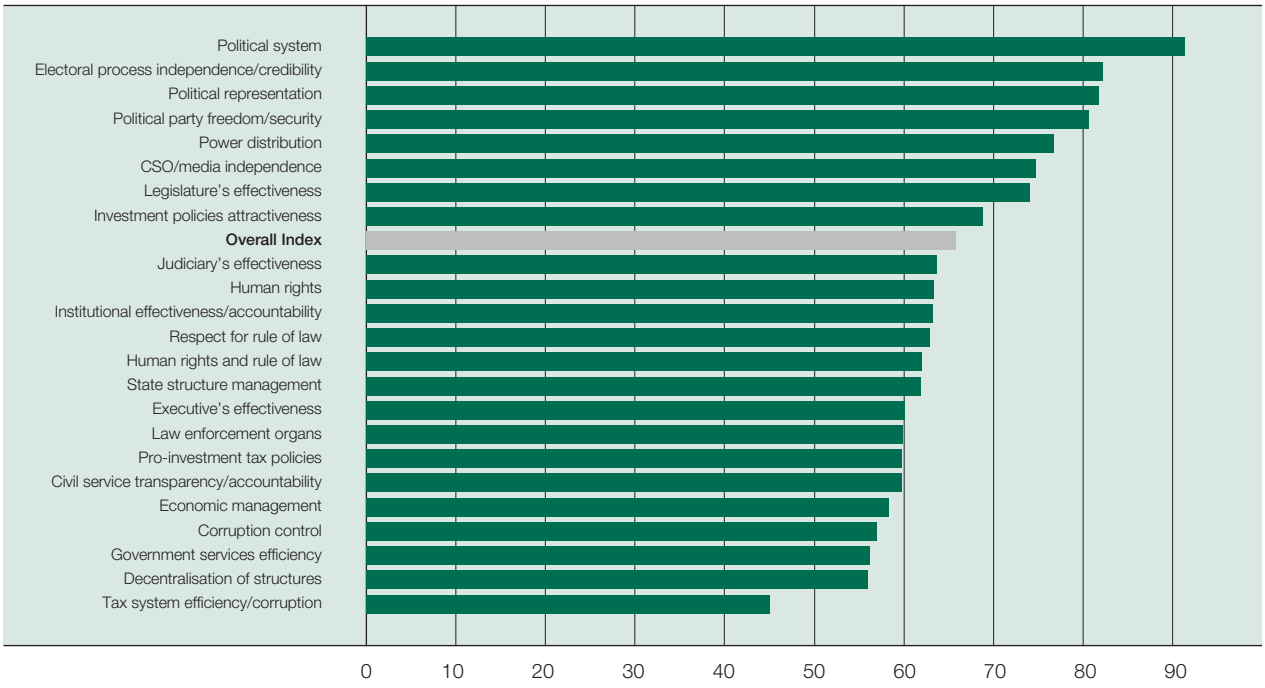


Figure 11 Kenya

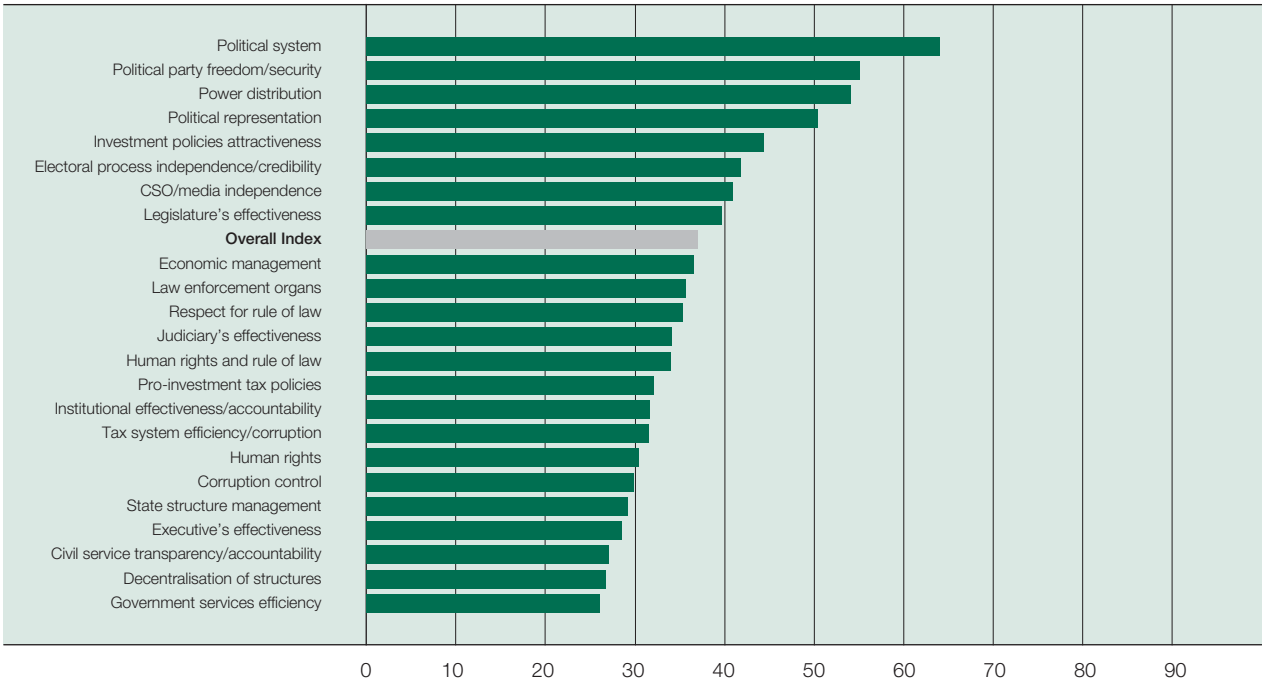


Figure 12 Lesotho

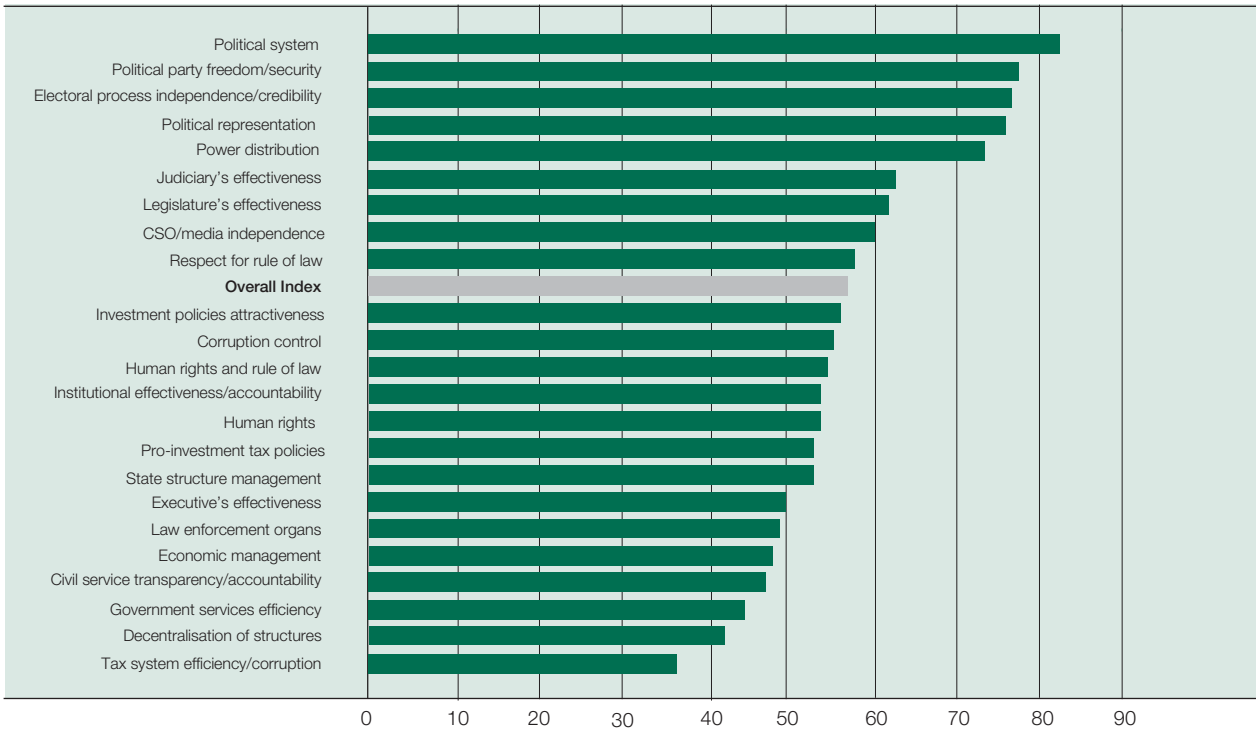


Figure 13 Malawi

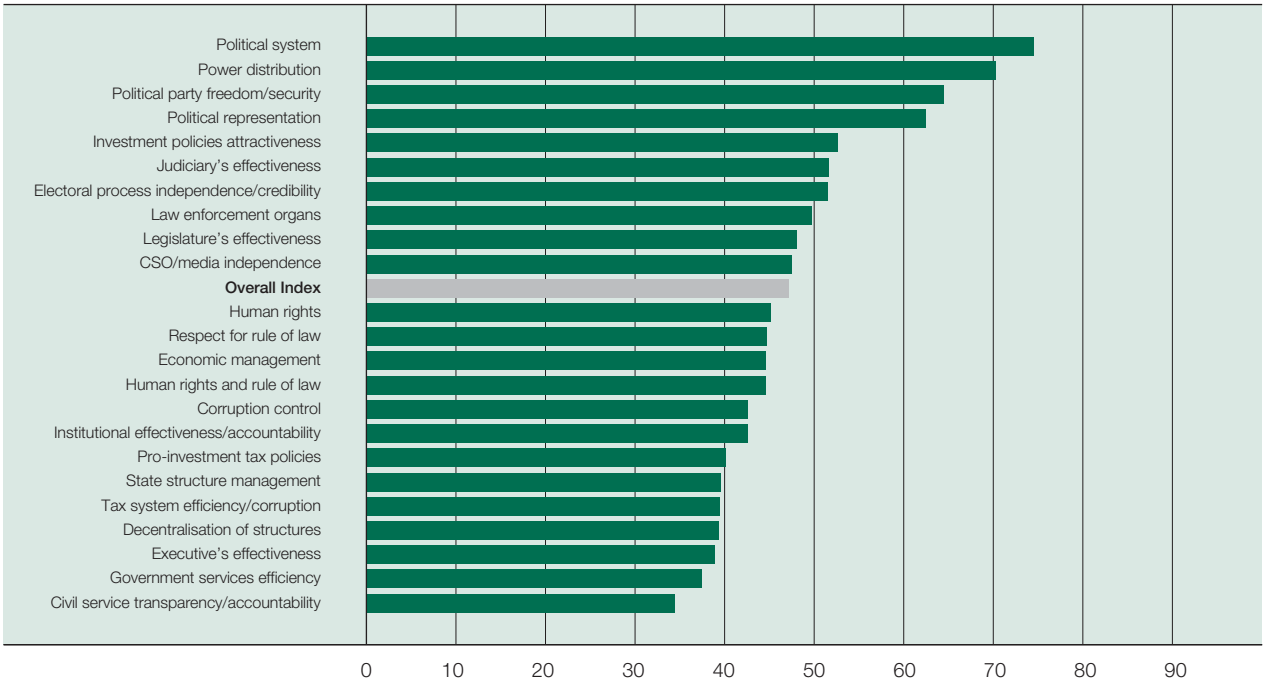


Figure 14 Mali

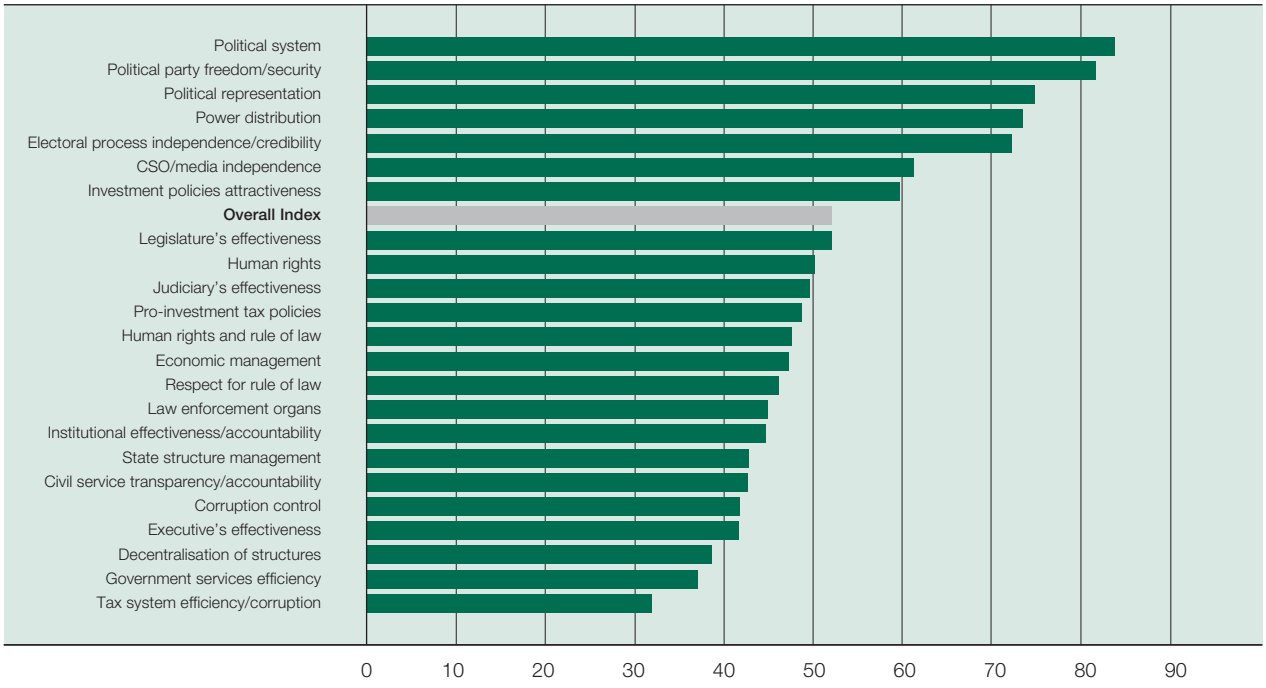


Figure 15 Mauritius

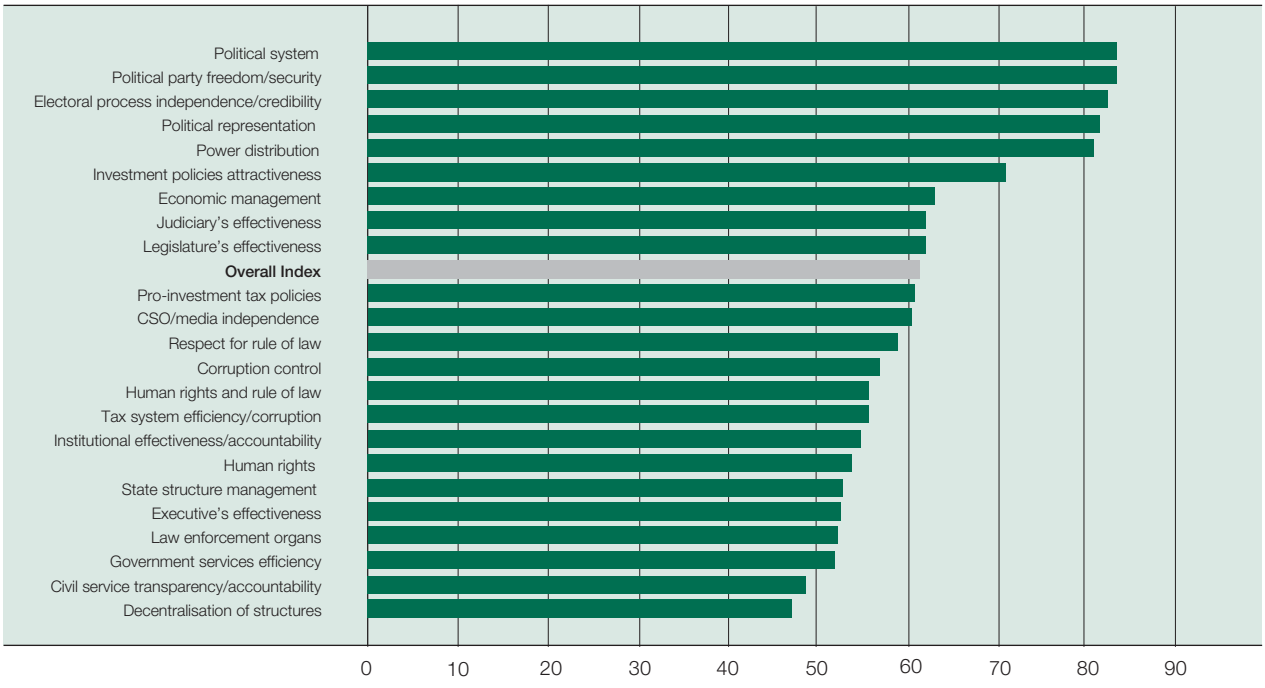


Figure 16 Morocco

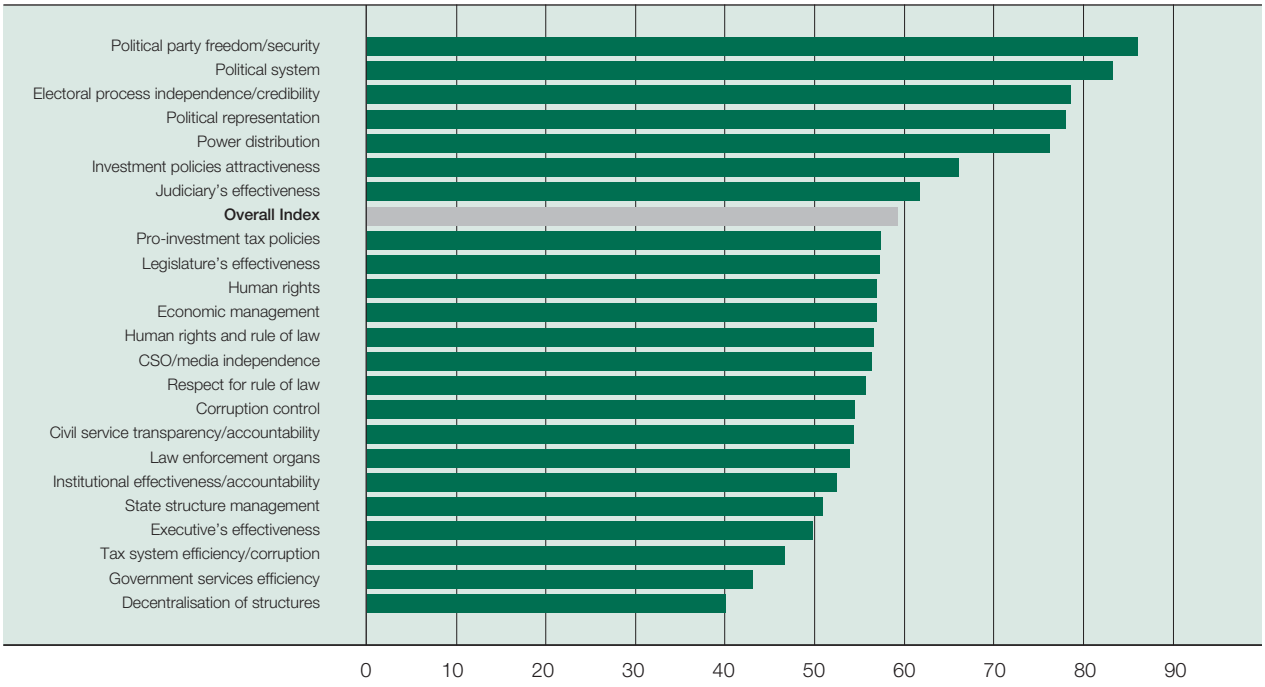


Figure 17 Mozambique

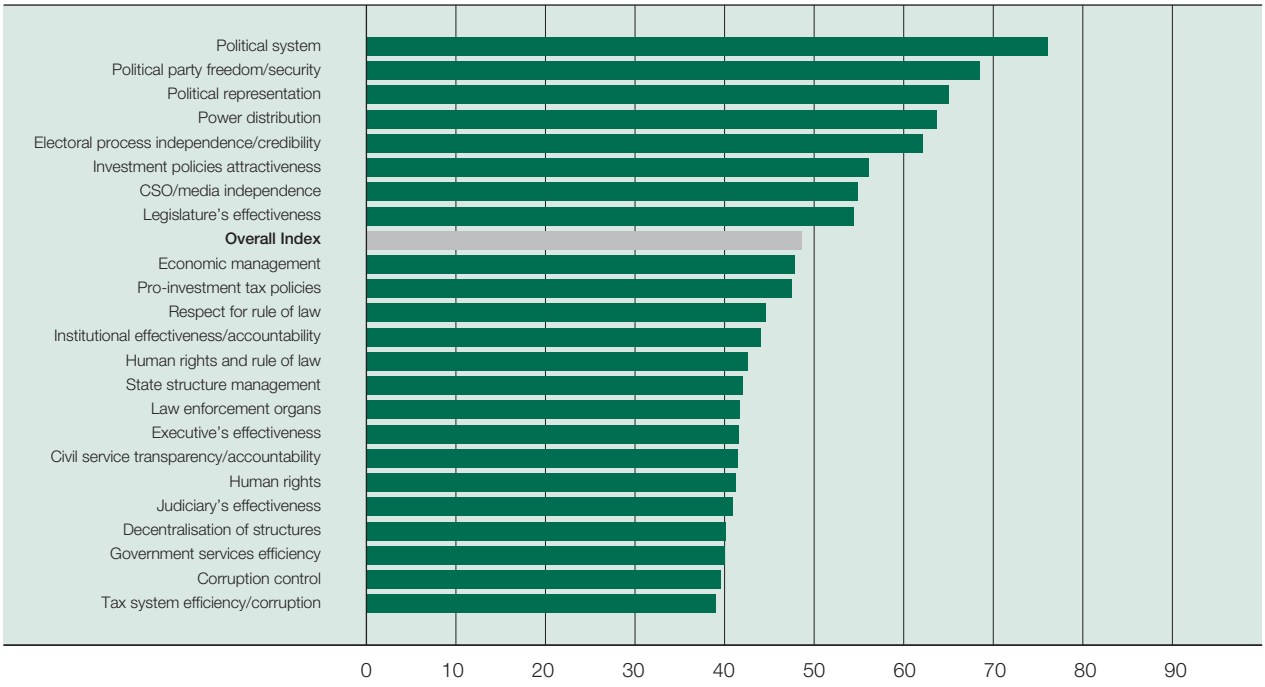


Figure 18 Namibia

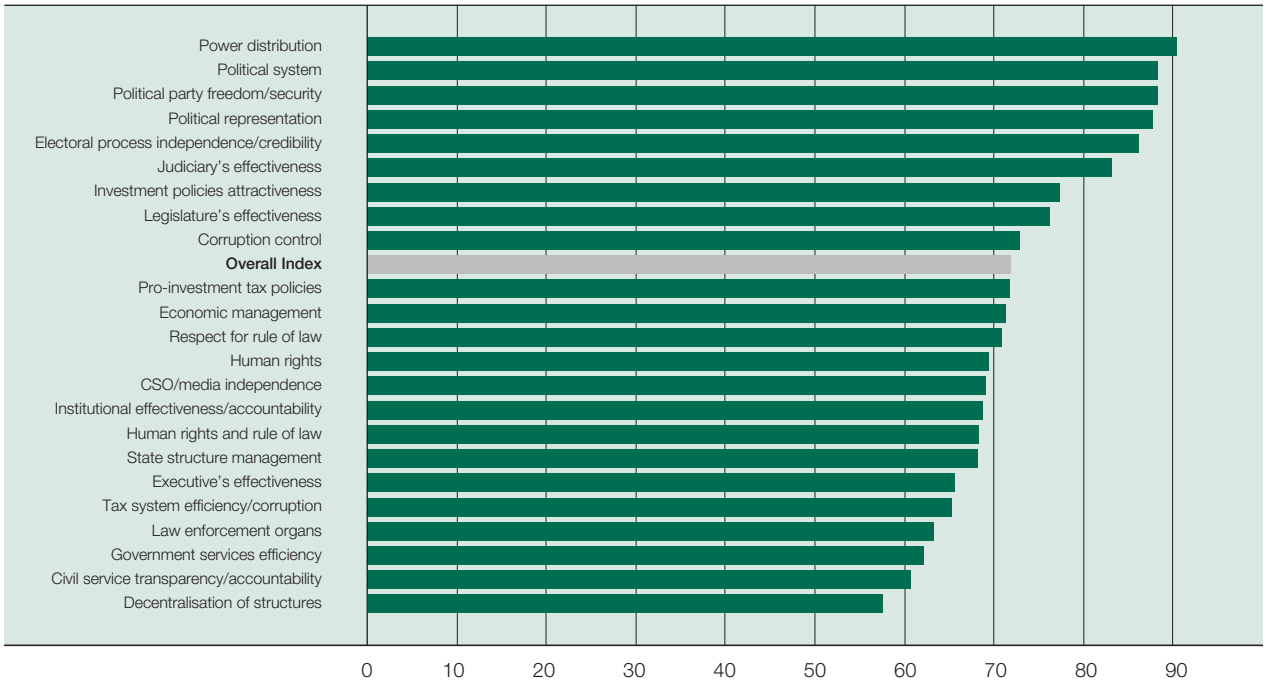


Figure 19 Niger

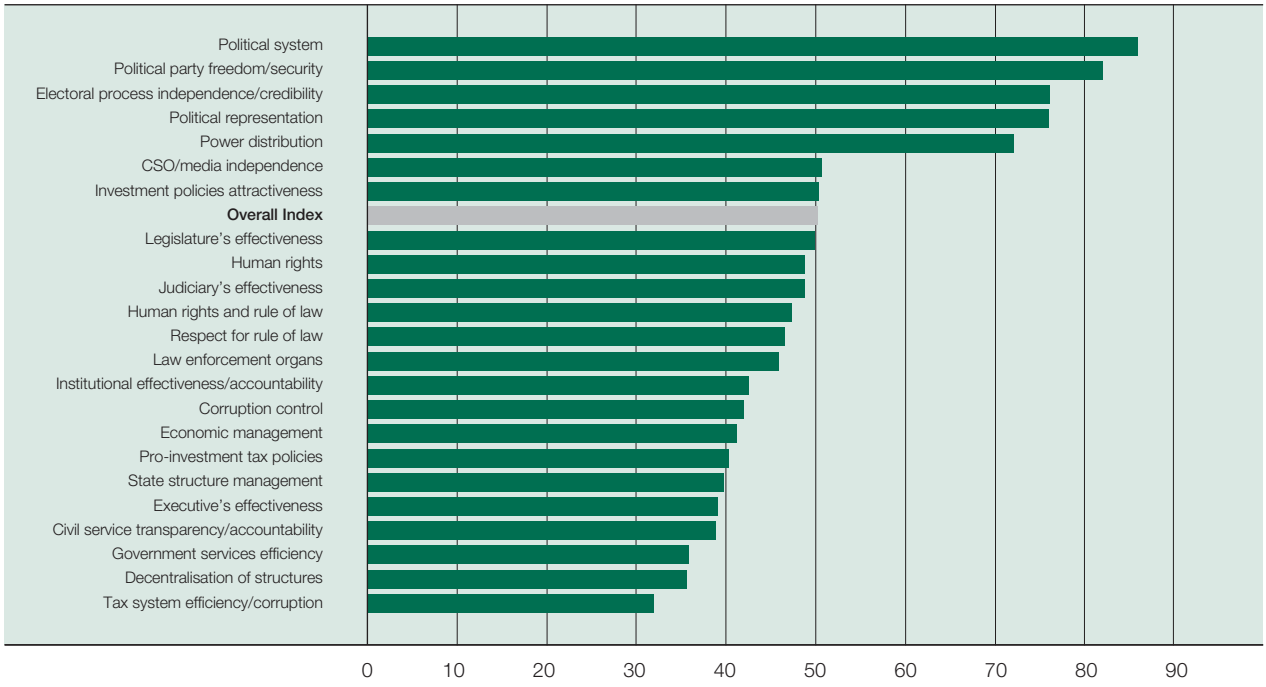


Figure 20 Nigeria

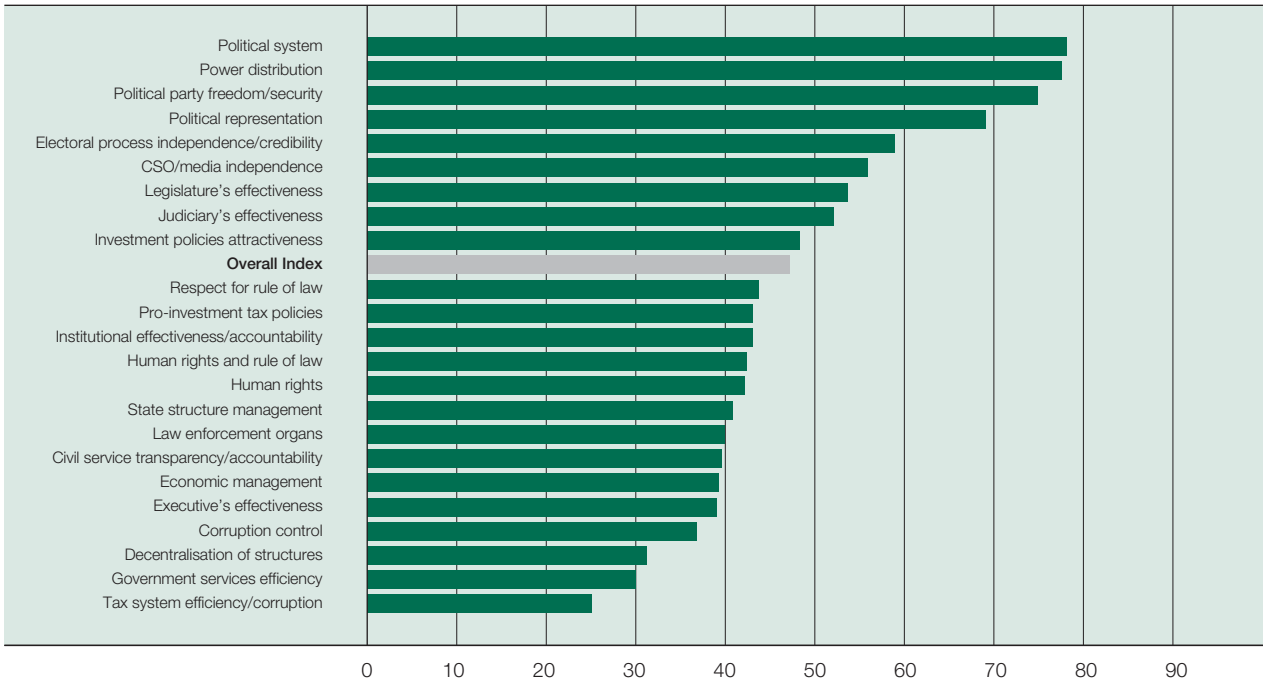


Figure 21 Senegal

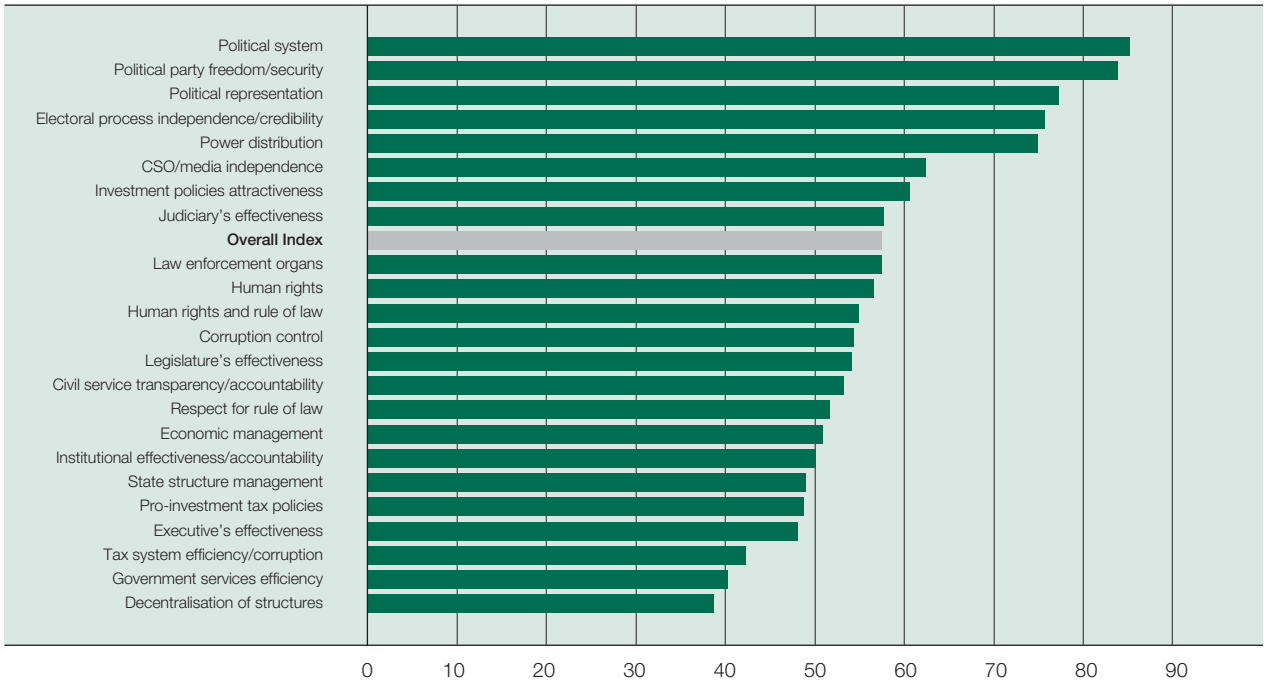


Figure 22 South Africa

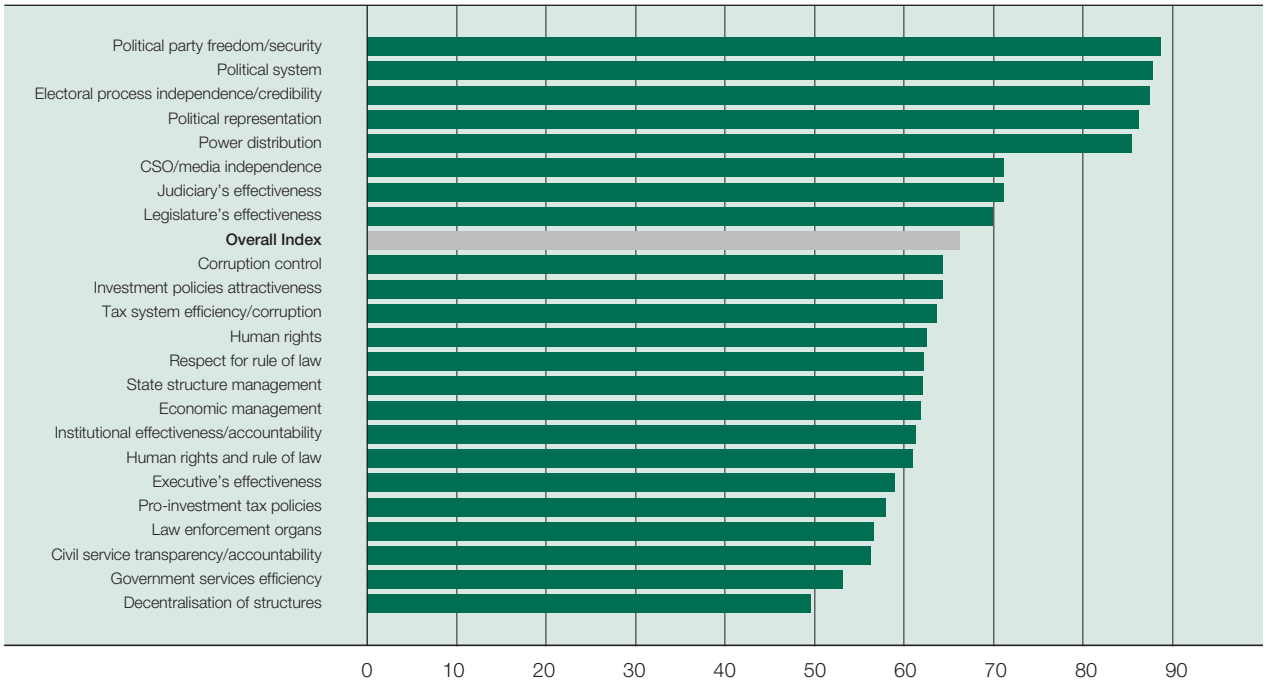


Figure 23 Swaziland

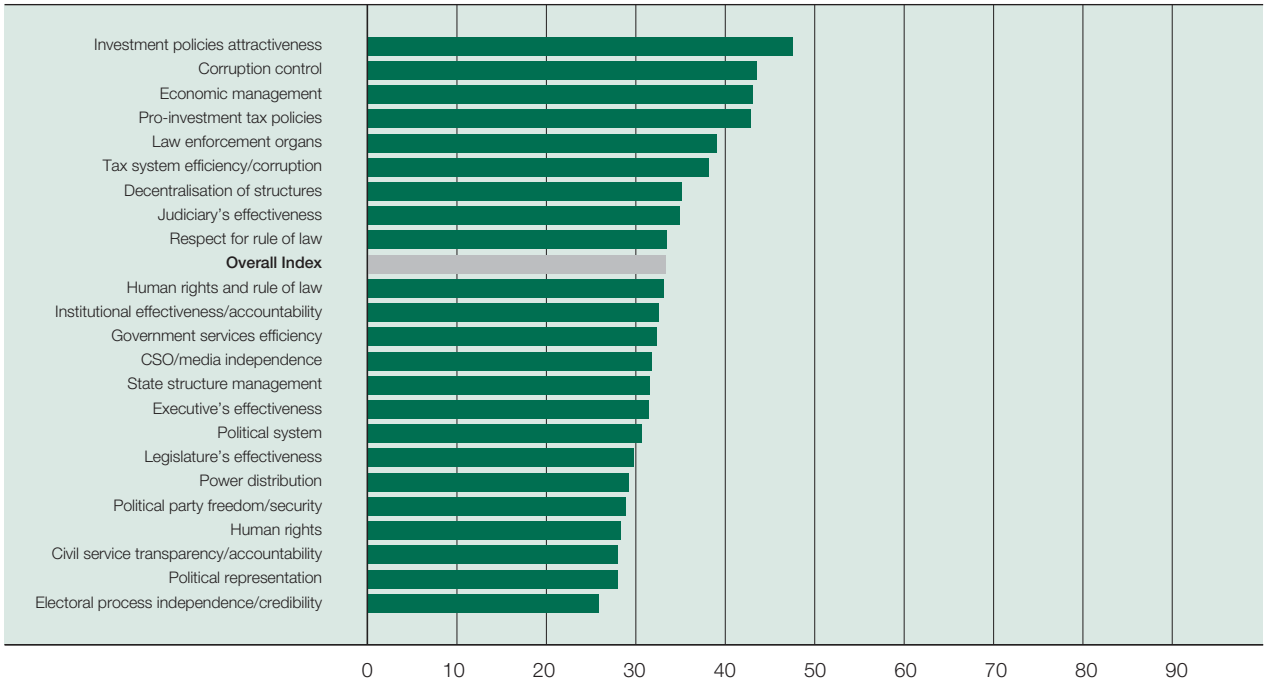


Figure 24 Tanzania

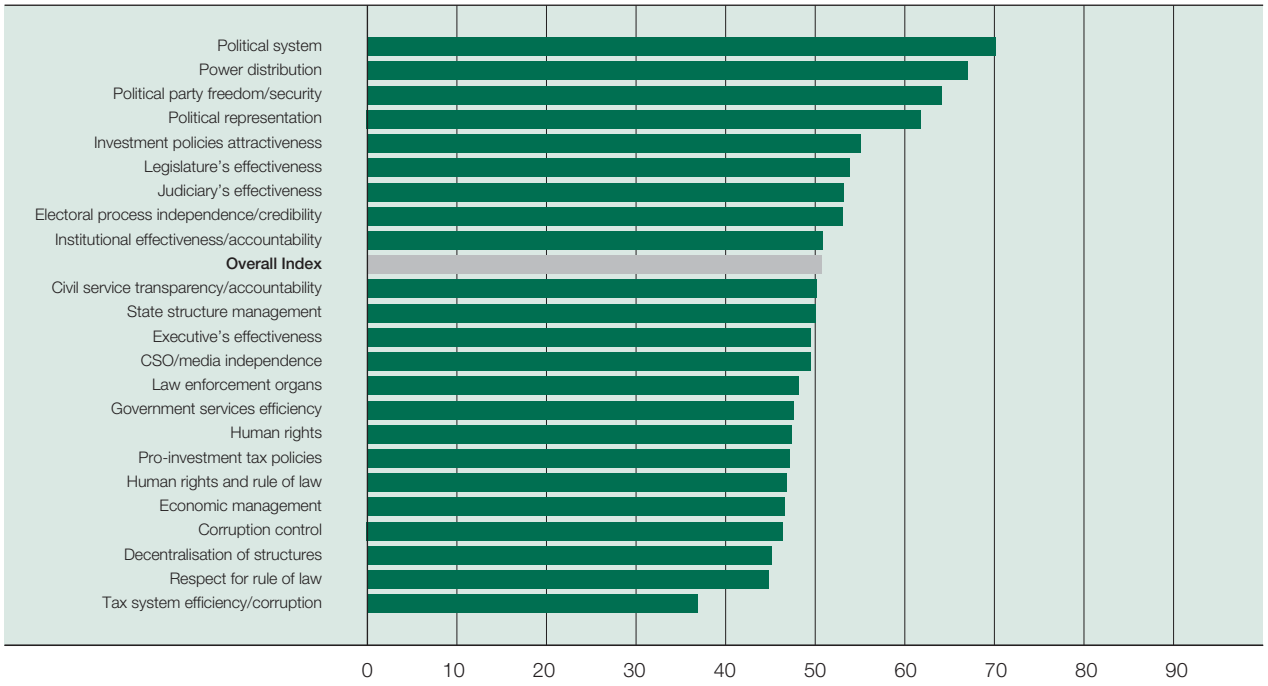


Figure 25 Uganda

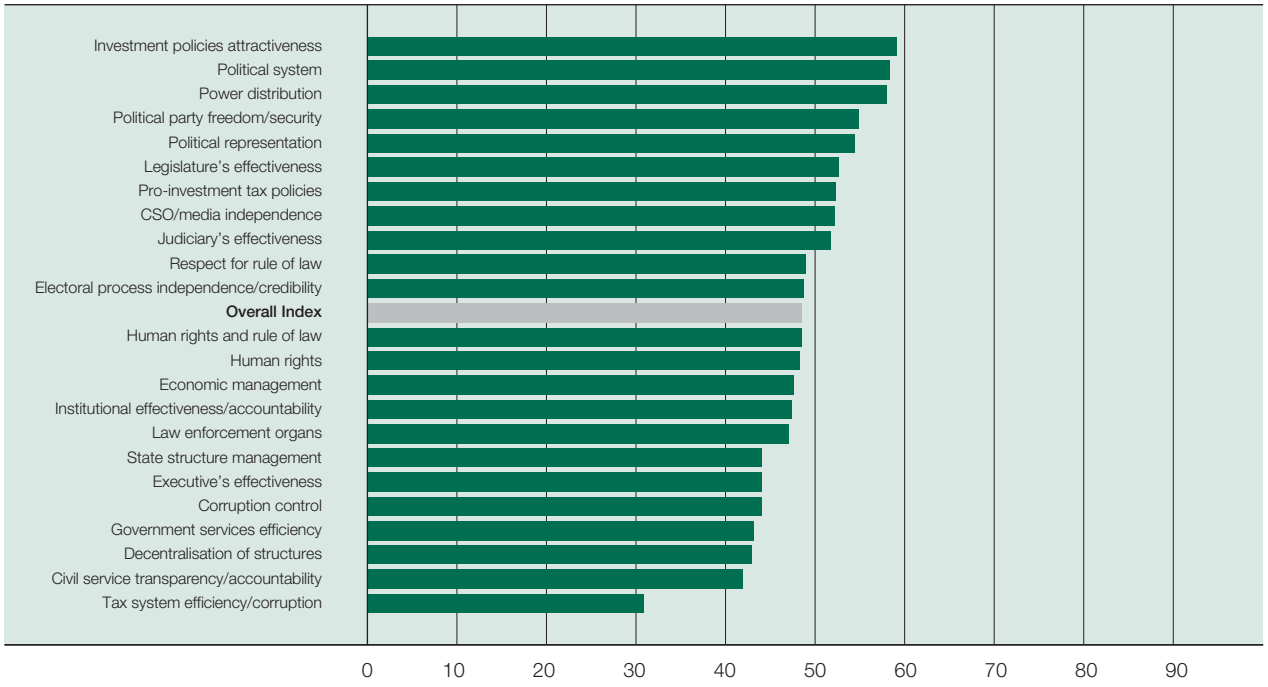


Figure 26 Zambia

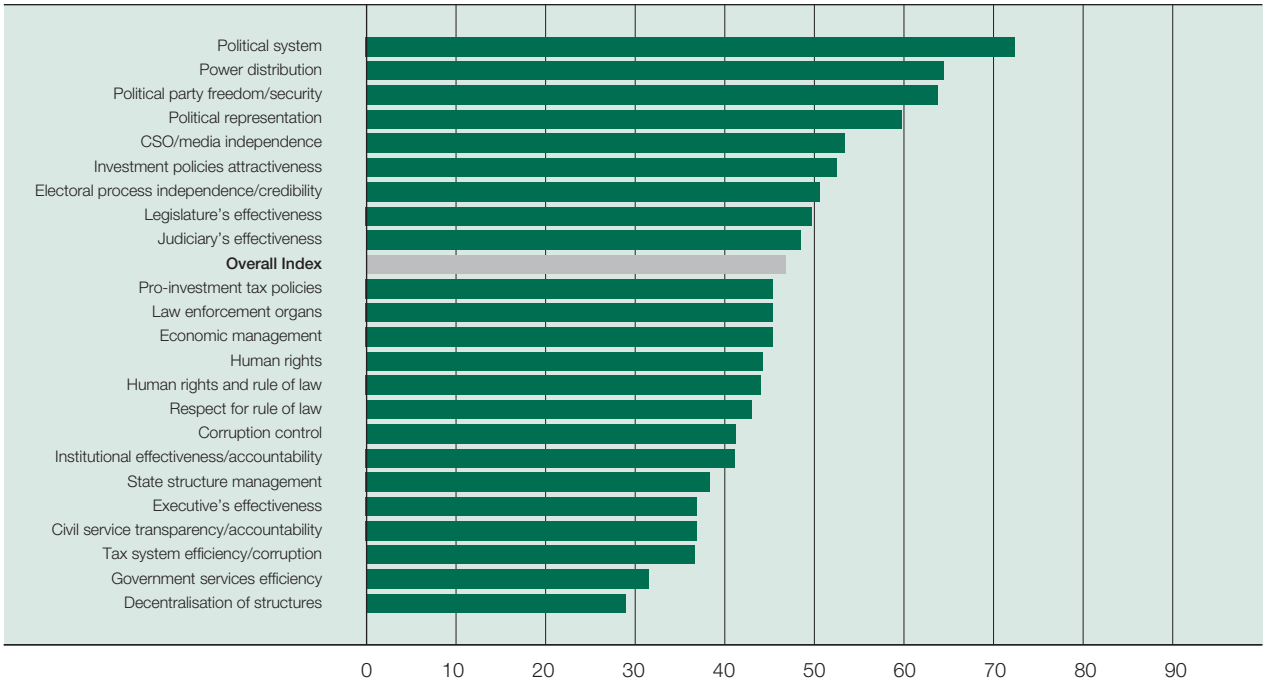
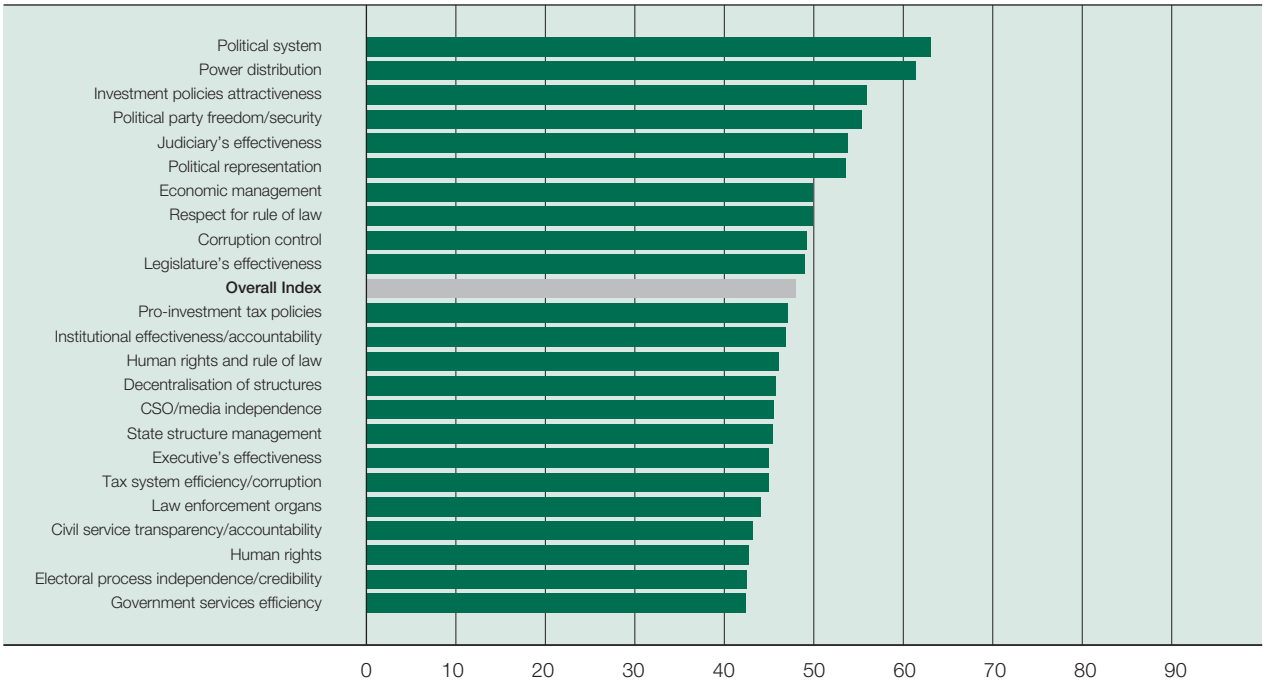


Figure 27 Zimbabwe



Annex 4
Other indicators of governance

The World Bank is perhaps one of the largest users of indicators, in addition to being engaged in aggregating information from a variety of sources to build indices that are designed to enable international comparisons with respect to six clusters that represent different aspects of governance: voice and accountability, political stability and lack of violence, government effectiveness, regulatory quality, rule of law and control of corruption. The most recent World Bank aggregation in 2002 has been prepared for at most 199 countries for the voice and accountability cluster and for at least 186 countries or more for the remaining 5.

The International Development Association (IDA) has also used performance measures based on a country policy and institutional assessment (CPIA) scheme which uses ratings on a scale of 1–6 on 20 criteria under 4 clusters: economic management, structural policies, policies for reducing inequalities and public sector management and institutions; the scheme is designed to investigate property rights and rule-based governance, quality of budgetary and financial management, efficiency of revenue mobilisation, efficiency of public expenditures, transparency, accountability and corruption.

One other set of indicators under the sponsorship of the World Bank comes as part of its *World Development Report 1997: The State in a Changing World*, which includes results of studies, that has been carried out in 67 countries where only investors have been the respondents. UNDP has also had its own set of indicators and indices.

UNDP's indicators have been used in its annual *Human Development Report.* These indicators have been employed in the construction of the human development index for all countries, the human poverty index for developing countries, the human poverty index for selected OECD countries, the gender-related development index and the gender empowerment measure. Just as in the case of IDA's CPIA, UNDP uses no indicators to measure or monitor political governance, though its 2002 report emphasises the importance of the exercise of political power by the people. Moreover, the way UNDP has used indicators to construct indices has been a subject of considerable debate by various stakeholders.

At the governmental level, the United States Agency for International Development (USAID) makes use of democracy and governance programme indicators, which are designed to measure country and programme performance. These indicators have been organised under four governance clusters: rule of law, elections and

political processes, civil society and governance. USAID's scope of measurement appears to have some similarity with that of ECA.

In November 2002 the U.S. government placed good governance centre stage by spelling out plans for the allocation of funds from the $5 billion a year Millennium Challenge Account to countries that "justly govern," "invest in people" and "promote economic freedom"; these three clusters make use of 16 performance criteria and the data come from the World Bank, national sources, IMF, Freedom House and Institutional Investor Magazine; the World Bank and Freedom House have provided all the data for "Governing Justly".

Creditworthiness of nations has been, and continues to be, measured by such rating agencies as Standard and Poor's, Moody's, International Country Risk Guide and Business Environmental Risk Intelligence. These sources are also used by the World Bank, among others, to construct indices for different aspects of governance.

Since 1995 the International Monetary Fund has also used a set of indicators in its Special Data Dissemination Standards to monitor the international credit rating of member countries in relation to their access to IMF funding and international capital markets; this is largely restricted to businesses in fairly well developed and fully developed nations.

In late 2000 and early 2001 the United Nations University carried out the World Governance Survey in 22 countries that are described as "transitional societies", including Nigeria, Tanzania and Togo from Africa. The scope of the research included 6 governance clusters and 30 indicators on political society, the judiciary, the executive, the bureaucracy, civil society and economic society.

Other widely known nongovernmental organisations that employ indicators include Freedom House, which is engaged in monitoring progress in political rights and civil liberties and Transparency International, which has been constructing a corruption perceptions index since 1995. Transparency International's 1999 index, which used data from 14 sources, covered 99 countries, as opposed to only 41 in 1995. There are also several other organisations, mostly in developed countries, that employ indicators for different purposes.

In Africa there is the Afrobarometer, which was launched in 1999 to report on the attitudes of citizens towards democracy, markets and civil society in Botswana, Ghana, Lesotho, Namibia, Nigeria, Malawi, Mali, South Africa, Tanzania, Uganda, Zambia and Zimbabwe; all 12 countries have also been included in UNECA's governance project. The Afrobarometer is one of the World Bank's 25 sources of inputs for voice and accountability, government effectiveness and control of corruption in its 2002 aggregate governance estimates.

Annex 5
Comparing Africa governance indicators with others

The Africa governance indicators are derived from the data collected in the expert panel study, which contains 83 measures of the perceptions of the nation's elite in each of 27 countries covered in the study, clustered in 23 groups.

The 24 Africa governance indicators (including the overall measure) were compared with 10 governance indicators routinely used by the World Bank: five governance-related indicators from its CPIAs, the average score of these five governance indicators in the CPIA and four worldwide governance indicators published by the World Bank Institute, covering rule of law, government effectiveness, corruption and voice and accountability (see annex 4). All these indicators have been tested empirically and proved to be good predictors of different aspects of the quality of governance, both in cross-country regressions and in country specific analyses.

Of the 27 countries with Africa governance indicators, only 25 have matching World Bank indicators: 23 countries from sub-Saharan Africa and 2 countries from North Africa.

Most indicators are reasonably well correlated (table A4.1). The best overall proxies for the Africa governance indicators were CPIA 16 on rule of law and property rights and the World Bank Institute's voice and accountability score, followed by its government effectiveness and rule of law scores. The weakest correlation was found with CPIA 18 and 19, not surprising since the Africa governance indicators do not cover issues related to revenue mobilisation (CPIA 18) and only partly cover issues related to public sector management and civil service (CPIA 19). There are three clear midrange indicators: CPIA 20 (on corruption), the average CPIA 16–20 and the World Bank Institute's corruption score.

To compare country level results, each of the Africa governance indicators was estimated using each of the CPIA and World Bank Institute indicators as a predictor. The analysis of standardised (Pearson) residuals shows that several countries are consistent outliers (table A4.2). The standardised or Pearson residual is calculated as the difference between actual and predicted value divided by the standard error of the residual. Africa governance indicators rank Ethiopia, Kenya, Chad, Swaziland, and to a lesser extent Egypt, significantly lower than the CPIA, while countries such as Ghana, Namibia and to a lesser extent The Gambia and Zimbabwe are ranked significantly higher than the CPIA. The lower ranked countries are more consistent across indicators than the higher ranked countries.

Because survey instruments were applied by different research groups in each country, the results cannot be compared across countries. They are merely indicative of perceptions in one country at one point in time. The Africa governance indicators are thus useful primarily for country-specific analyses.

Table A4.1 Level of correlation between selected World Bank governance indicators and Africa governance indicators
Percent by level

	Correlations with 24 Africa governance indicators in each interval (% of all correlation)		
	Less than 34%	**34–66%**	**More than 66%**
World Bank Institute rule of law score	0	54	46
World Bank Institute government effectiveness score	4	42	54
World Bank Institute corruption score	13	83	4
World Bank Institute voice and accountability score	0	46	54
CPIA 16: Property rights and rule-based governance	0	29	71
CPIA 17: Quality of budgetary and financial management	38	63	0
CPIA 18: Effectiveness of revenue mobilisation	79	21	0
CPIA 19: Quality of public administration	83	17	0
CPIA 20: Transparency, accountability and corruption	4	96	0
Average of governance CPIAs	0	100	0

Table A4.2 Standardised residuals (%)

	Share of standardised residuals with absolute value greater than 1 (%)	Share of all negative standardised residuals (%)	Share of all positive standardised residuals (%)
Benin	4	28	72
Botswana	9	25	75
Burkina Faso	8	59	41
Chad	59	100	0
Egypt	34	83	17
Ethiopia	83	100	0
Gabon	13	52	48
The Gambia	38	3	98
Ghana	70	2	98
Kenya	59	99	1
Lesotho	5	19	81
Malawi	6	75	25
Mali	16	50	50
Mauritius	11	51	49
Morocco	18	13	87
Mozambique	5	58	42
Namibia	85	0	100
Nigeria	17	38	62
Senegal	10	26	74
South Africa	21	5	95
Swaziland	67	93	7
Tanzania	5	58	42
Uganda	7	55	45
Zambia	7	77	23
Zimbabwe	36	21	79