African Commitments to Democracy in Theory and Practice: A review of eight NEPAD countries

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Introduction and summary: A shadow peer review of democratisation

This report reviews the progress of democratisation in Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda from the end of the Cold War until today. These eight countries were chosen because they have all signed up to the African Peer Review Mechanism (APRM); they are central contributors to the New Partnership for Africa's Development (NEPAD); and they represent a good geographical spread on the African continent.

The survey is not comprehensive, but investigates the countries' commitment to the following principles of democracy endorsed by the African Union (AU): the fairness of electoral systems; independent electoral commissions; sound voter registration systems; multi-party politics; inclusive states; term limits for heads of state and government; and the independence of the judiciary.

The review identifies many shortcomings in the eight countries (more in some than in others).

However, the study focuses on *democratisation,* and not on the existence of fully-fledged democracies. Viewed from this perspective, the picture looks brighter. All eight countries are more democratic today than in the late 1980s.

There are important differences between the eight countries. While a few (Ghana, Senegal and, particularly, South Africa) can be relatively satisfied with their progress, others (Algeria, Ethiopia and Uganda) took great strides in the late 1980s or early 1990s, but their democratisation processes have stagnated some steps short of democracy. Some of them may even be at risk of reverting to more authoritarian systems. Nigeria only returned to civilian government in 1999 and serious flaws are still apparent in its democratic system. The developments since 2002 in Kenya provide grounds for cautious optimism. In all eight countries, however, democratic gains are recent and could easily be reversed.

The study focuses on democratisation. All eight countries are more democratic today than in the late 1980s

There is a concern that some of the countries under review will become mired in a system that dresses an essentially authoritarian or one-party system in the garbs of democracy. Despite this, the review does not give cause for pessimism; the trend since the early 1990s has mostly been positive. For an even brighter future, all key stakeholders – from politicians, military officers and judges of the state apparatus, to civil society organisations, activists and ordinary voters – need to pull together towards the common goals set out by the AU and agreed upon by all of Africa's 53 states.

The research

The research on which this report is based is the result of the collaborative effort of many people and institutions. Since it is difficult, if not impossible, to find one person who is an expert on democracy in eight different countries, the author sent a list of questions regarding the seven AU commitments under review to a group of country researchers and experts. Without this pan-African (and beyond) teamwork, the report would not have been possible. The names and institutions of the country reporters are as follows:

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

This report summarises the conclusions of a much longer monograph, published separately by the AHSI.[2] Readers who would like a more thorough account of research findings, sources and methods should consult this monograph, also available at www.africanreview.org

Setting the stage:
The AU, democracy and human security

The premise of the AHSI project is that the NEPAD goal of *good political governance* will lead to increased human security on the African continent. This section will provide a brief discussion of the links between human security, good political governance and democracy before turning to the particular AU democracy commitments reviewed in this report. The remainder of the report will study each commitment in turn and investigate how adherence to these commitments has fared in the eight countries. The conclusions on each country were arrived at by making a clear distinction between commitment and practice. To introduce a legal obligation is only the first step towards adherence. Even more important is the practice of key political actors in respecting or ignoring this obligation.

The report tries to group together countries with similar experiences, strengths or weaknesses. However, the report does not attempt to provide a league table of the eight countries. The research is not comprehensive enough to warrant such rigid rankings. Nevertheless, the findings of the report make it relatively easy to conclude that the eight countries are divisible into two groups of "hopefuls" and "stagnant" countries.

Human security, good governance and democracy

Human security has become a central concept in the vocabulary of academics, policy-makers and civil society practitioners because it provides a means with which to emphasise that the promotion of security is quintessentially about protecting *people*, and not just about defending abstract collective entities such as "states" or "regimes". However, the problem with the concept of human security is that it is often so broadly defined – to include issues from traffic accidents to full-scale warfare – as to become almost meaningless.

It is therefore necessary to narrow down the meaning of human security. Just as the term national security is limited to issues that are believed to threaten the very survival and integrity of a state and its regime, human security should be defined in an equally existentialist way to include only political actions and decisions that threaten a person's life, liberty and other basic human rights.

Good political governance can be defined as the sum of the instituti ons, processes and policies that are conducive to human development and rights. While democracy is not a perfect system of governance, it

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2   Anne Hammerstad, *African Commitments to Democracy in Theory and Practice: A review of eight NEPAD countries,* AHSI monograph no.1, AHSI, Pretoria, 2004.

would be hard to argue that any other system has had the same success in protecting and supporting the political and economic rights of the people living within it. Thus, this report – in line with the principles of the AU – understands good political governance as the furtherance of democracy.

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

The overall theme of the review is thus the progress of democratisation from a human security perspective. This emphasis leads us to a focus on systems and processes for the transfer of political power from one individual or group to another. The reason for this is straight-forward: the lack of peaceful mechanisms – or the lack of respect for such peace-

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ful mechanisms – for the transfer of power has been a common trigger of political repression, violence and even civil war in Africa. Democratisation does not immediately eliminate such human security threats, but if a democratic system is given time to root itself in strong institutional safeguards, and if the principles and values of democracy become internalised among the political élites of a country, then violent power struggles would become a thing of the past. A properly functioning democratic system is one that takes power transfers out of the realm of security threats and into the realm of ordinary politics. However, the emphasis is on *properly functioning*: the road to democracy is a risky one, and can lead to chaotic and violent conditions if key political actors do not play by the rules.

The seven democracy commitments

There should by now, in 2004, be no controversy involved in assessing African states' commitment to

democracy. The declarations and documents of the AU and its predecessor, the Organisation for African Unity (OAU), promote a globally accepted understanding of democracy and put African leaders' commitment to all aspects of democracy reviewed in this study beyond doubt. This can be seen in the Lomé Declaration (2000), where AU members spell out the principles underlying the organisation's "common concept of democracy". The Declaration states that:

> […] without being exhaustive, we have also agreed on the following principles as a basis for the articulation of common values and principles for democratic governance in our countries:
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> i) adoption of a democratic Constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy;
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> ii) respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament;
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> iii) separation of powers and independence of the judiciary;
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> iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;
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> v) the principle of democratic change and recognition of a role for the opposition;
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> vi) organisation of free and regular elections, in conformity with existing texts;
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> vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders;
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> viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981;
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> ix) guarantee and promotion of human rights.

Taking the AU's own definition of democracy as a starting point, this review has identified seven particular AU commitments to democracy. They have in common that without them, legitimate and peaceful mechanisms for transitions of power from one person to another, or from one political party to another, are cut off. As a result, regime change – or attempts thereof – is likely to turn violent. The seven are listed below.

Fairness of the electoral system: Is the overall result of the electoral process fair and legitimate, and

is the election outcome reflected in the composition of the legislative and executive powers? The AU commits to ensuring the fairness of electoral systems in several documents, including the Lomé Declaration (2000), the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) Solemn Declaration (2000) and Memorandum of Understanding (MoU) (2002), and the Cairo Agenda for Action (1995).

Electoral commissions: Do they exist, are they independent and well funded, and are their operations and decisions generally accepted as fair and impartial? The CSSDCA MoU promises to "[e]stablish by 2003, where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair and transparent elections in all African countries".

The voter registration system: Is everyone who has the right to vote, able and allowed to do so? Does tampering with the voters' lists undermine their votes? There is no direct mention by the AU of this commitment. However, the organisation's commitment to sound voter registration systems is taken as a given since free and fair elections would be impossible without such systems.

Multi-party politics: Are political parties allowed to form, meet and stand for election? Are they able to campaign freely? The CSSDCA Solemn Declaration states that "[t]here shall be no hindrance to the promotion of political pluralism", and the CSSDCA Plan of Action promises to "[p]rotect and promote respect for (…) the freedom of expression and association, political and trade union pluralism and other forms of participatory democracy".

An inclusive political system: Who has access to political power and to the benefits of public office, policies, goods and services? The AU's Ouagadougou Declaration (1998) commits to "abolish exclusion and, in this regard, involve all and sundry without discrimination in the management of public affairs".

Term limits for heads of state: Are there such limits and are they adhered to? The CSSDCA MoU promises to "[a]dopt by 2005 a commonly derived Code of Conduct for Political Office Holders that stipulates among others, an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates and governments should scrupulously abide by it".

Independence of the judiciary: Are the courts independent from the state and do they exercise meaningful oversight over executive and parliamentary actions? The AU repeatedly mentions the importance of the "separation of powers and independence of the judiciary", for instance in the Lomé Declaration and the Cairo Agenda for Action.

Having set out African leaders' strong commitment to democracy and the salience for human security of the particular democracy commitments reviewed in this report, it is time to turn to the actual review. Since this report will concentrate on the conclusions from the review exercise only, the reader should refer to the longer *monograph,* upon which this paper is based, to see how these conclusions were reached.

From votes to political power: Fairness of the electoral system

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

Taking into account the great variety of possible democratic models, the fairness of a country's electoral system cannot be measured against one predetermined standard. However, democratic diversity should not obscure the fact that blatantly undemocratic practices, such as the gerrymandering of constituencies and the buying of votes, are always out of bounds. The conclusions of this review are not based on an exhaustive account of each country's practice, but concerns particular problems or strengths relating to how votes are transformed into seats; how constituency boundaries are demarcated; and whether state resources are abused for election campaigning purposes.

When it comes to how votes are transformed into seats, the eight countries have chosen very different electoral systems. South Africa has a pure PR

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system, while Kenya, at the other end of the spectrum, has an unmitigated version of the winner-takes-it-all Westminster model. The rest have chosen hybrids of the Westminster and PR models. Many of the countries, particularly Algeria, have adjusted their electoral laws in the last decade, a sign that democracy is still in the process of finding its shape.

While two countries have a federal system (Nigeria and Ethiopia), most are relatively centralised. Another important difference is in the field of ethnic politics: while Algeria prohibits political organisation based on ethnic or religious identity, the Ethiopian system has gone to the opposite extreme of creating an ethnic federal state where *only* ethnic-regional political parties are allowed.

The study's conclusions provide opportunities for both optimism and concern. The cause for optimism is clear: All eight countries have electoral systems and practices that are fairer today than in the early 1990s. South Africa exchanged apartheid for universal suffrage and majority rule. South Africa's electoral structures and institutions are solid and well functioning. Senegal and Ghana's systems still suffer some weaknesses, such as a clientelist tradition and the abuse of state resources and power to further the election campaign of the ruling party. However, the two countries' most recent elections were great improvements on earlier ones.

Nigeria made a democratic leap in 1999, when the military rulers handed power over to an elected president. However, the country still has a long way to go before it can be said to have a robust electoral system respected by all political actors, including the ruling party, the military and even the electoral commission. Perceptions of unfair electoral boundaries have led to widespread violence in the oil-rich southern Niger Delta – an example of how potent a political issue the demarcation of constituency boundaries can be. Abuses of state resources and vote buying are also serious problems. There was little improvement in standards from the 1999 to the 2003 election.

Algeria went some way in the direction of democracy during the period of review (with a setback in the early 1990s), although electoral democracy, introduced in 1989, is still overlaid by the behind-the-scenes power of the military. The experience of Algeria shows the importance of introducing an appropriate electoral system to suit the particular conditions of a country: the system introduced in 1989 led to a "winner-took-too-much" scenario. It allowed the party that won over 50 per cent of the votes to take *all* the seats in parliament. When the opposition Islamist party FIS won an absolute majority of votes in the 1991 election, the powers that be took fright and cancelled the next round of elections and suspended parliament. Thus the wrong choice of electoral model led to a backlash against democracy.

Uganda's electoral system, introduced with the 1995 constitution, is the only one that falls short of generally accepted democracy models. The so-called "Movement" (or no-party) system is an inventive approach that takes some aspects of traditional Western electoral models and rejects others. It forbids political parties to run for elections in the name of national unity (on the argument that party politics is divisive and therefore dangerous to the country's cohesion), thus precluding the holding of truly democratic elections.

Regarding the practical functioning of the electoral system, Uganda, Ethiopia, Nigeria and Algeria all have serious shortcomings. Candidates from the ruling parties (or the candidates favoured by behind-the-scene political powers) are supported by state resources in their election campaigns; and the intimidation of voters and opposition candidates are serious impediments to a fair electoral system. Despite such shortcomings, it is important to acknowledge the improvements in the four countries compared to the situation at the end of the Cold War.

Finally, while Kenya's system has stayed the same since 1992, the positive tendency is that political actors have learnt to adapt to the strengths and weaknesses of the country's pure version of the first-past-the-post model. However, gerrymandering, vote buying and abuse of state resources during elections are serious problems, and it remains to be seen whether the new ruling coalition has the will to tackle these problems.

Independent electoral commissions

Among the most salient human security threats facing the African continent today are the insecurity and violence resulting from disputes over how elections are conducted. For instance, electoral rules and

procedures were at the centre of the political struggle in Senegal, especially in the late 1980s and first half of the 1990s, when flawed elections were accompanied by street battles and the arrest of opposition politicians. In Nigeria, elections still bring with them widespread violence in areas such as the southern Niger Delta.

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

All eight countries under review have improved their electoral oversight mechanisms over the last ten to fifteen years. All have electoral commissions in one form or another, although their strength, independence and efficiency vary. South Africa and Ghana have created robust systems that leave little to be desired, and Kenya and Senegal have made great improvements. In the remaining four countries, progress has mostly been confined to the formal creation of electoral oversight bodies, while the practical will and ability of these bodies to ensure that elections are free and fair have been circumscribed. Thus, it is important to keep in mind that the AU commitment to create independent electoral commissions must mean more than just setting up such institutions: constitutional and legal guarantees respected by all parties, including the government; robust hiring and firing procedures that cannot be tampered with for political reasons; sufficient human and financial resources to enable the commissions to carry out their mandate in practice; and the independence and courage of the commission and election officials to protect the principles of free and fair elections, are all crucial if electoral commissions are to do their jobs properly.

Voter registration system

Fraud and violence on polling day is not always the most serious threat to free and fair elections. Experience has shown that more discreet and often more effective ways of rigging take place in the months leading up to the election. Tampering with voters' rolls can have a major impact on election results. The ability to ensure the fairness, transparency and robustness of a country's voter registration system is therefore a crucial component of a democratic system. A fair voter registration system is one that ensures that all eligible voters have a relatively easy time registering and checking their registration details, while non-eligible voters (under-aged voters, double registrations, ghost voters) are banished from the register.

All countries under review have adequate *formal* rules for who can vote and how they register. However, in practice, the voter registration systems of the eight countries cross the spectrum from solid and fair (South Africa) to malleable and chaotic (Nigeria). Ghana has a relatively satisfactory system, although controversies regarding the accuracy of the voters' list remain. Together with Kenya and Senegal, it has shown great improvements in the period under review. Nigeria, Uganda and Algeria still have problems with bloated, fraudulent or old lists while Kenya and Senegal have improved their records in this regard. In parts of Algeria and Nigeria, voter registration is also hampered by political violence and insecurity, although conditions improved markedly with the April 2004 presidential election. In Ethiopia, the problem does not lie with the voter registration process but with the lack of voters' choice: there is often no opposition candidate to vote for.

While many of the problems with the voter registration process are due to resource shortages and human error, fraud and manipulation undermines democracy in too many of the countries reviewed in this study. Improving the voter registration system should be a priority for most of them.

Multi-party politics

Regular elections – even when free and fair – are not enough to signal a mature democracy. To put it in social science terms, free and fair elections are a necessary, but not sufficient, variable. The remainder of this report will concentrate on some other necessary variables that deal with the political system as it functions between elections. This section looks at the conditions for multi-party politics in the eight countries under review and asks whether, and to what degree, a country's political system allows different

and differing opinions to be represented in a multi-party system.

The progress of democratisation since the end of the Cold War is evident when looking at the existence of multi-party pluralism in the eight countries. While none of them allowed the free formation of political parties at the end of the 1980s, by 2004 all but one had introduced a formal system of multi-party politics. South Africa, Ghana, Kenya and Senegal are the front runners. South Africa became a fully pluralist democracy in 1994, and the dominance of the African National Congress (ANC) is a reflection of popular support rather than obstacles in the way of opposition parties. Ghana, Kenya and Senegal have also made life much easier for critical voices and opposition parties, but this is a very recent development. Algeria, Ethiopia and Nigeria are less than fully pluralist. In Algeria, although the situation has recently improved, government critics and opposition voices are often suppressed through military interference and the banning of several parties accused by the authorities of being formed along ethnic or religious lines. In Ethiopia, on the other hand, it is *non-ethnic* parties that are illegal, while informal practices ensure that opposition parties do not rise to prominence. In Nigeria, a host of problems, including election fraud, police action against opposition rallies and a biased electoral commission, hinder opposition activities and gains. Of the eight countries, the only one that is nowhere near a multi-party system is Uganda, which has rejected party politics in favour of a "Movement" system. As in Algeria and Ethiopia, formal and informal, legal and extra-legal, mechanisms ensure that opposition forces do not grow strong.

Generally, the commitment to multi-party pluralism has strengthened considerably within the collection of states. However, improvements are very recent. Sustained efforts, by government and opposition, are necessary to ensure that the positive trend continues.

Exclusive or inclusive state

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

An inclusive political system avoids marginalisation and strengthens nation building. It softens the effects of losing political power, thereby making election results or other aspects of the transfer of power less of an existential issue: regardless of the party in power, the state and its institutions are there to protect and assist all citizens. This makes violence in connection with contests for power less likely.

Ghana, Kenya, Senegal and South Africa are the more inclusive among the eight political systems under review. Ghana has had an explosion in public participation in recent years, and the government has strained to ensure broad regional representation in public offices and to provide job opportunities for opposition representatives. Senegal used to have strong clientelist ties and domination by the Wolof speaking part of the population, but these have diminished in recent years. However, the conflict in Casamance province still leaves a stain on the country's reputation for inclusiveness. South Africa is generally inclusive and proudly calls itself the "rainbow nation". In Kenya, widespread corruption under the previous regime meant that ordinary people were marginalised, while the political élite catered to itself and ensured that its own supporters received government jobs. While a change of regime in 2002 has helped undermine this, there are signs that a similar system is spreading now with the new National Rainbow Coalition (NARC) government. While Kenya's gains have been so recent as to warrant caution in drawing any conclusions, prospects for further improvement and consolidation look relatively good in Ghana, Senegal and South Africa.

Algeria, Ethiopia, Nigeria and Uganda suffer from greater problems of exclusion and marginalisation. In Algeria, there is a wide gap between ordinary citizens and a small political and military elite that have reaped

great economic benefit from their positions of political power. Discrimination against the Berber population and persecution of perceived followers of religious parties, also constitute serious problems of exclusion. Ethiopia has a history of exclusion that spans centuries. Today, opposition supporters (regardless of ethnicity) as well as people who belong to minority ethnic groups in their region suffer from discrimination and marginalisation. In addition, a disproportionate amount of federal money goes to Tigray – home region of the dominant group within the ruling coalition. In Nigeria, exclusion is often related to conflicts between different ethnic groups over the extraction of, and revenue from, natural resources. The country's oil-rich regions are also among its poorest, suffering from a general paucity of public goods and services. In Uganda, although the Movement system is meant to be all-inclusive, non-conformity and criticism of the system is punished by discrimination and exclusion from public office.

It should be underlined that the situation in these four countries was not any better before. In fact, they are more inclusive today compared to the situation at the end of the Cold War. However, there is still a danger that earlier gains may be lost again as the political élites that were behind establishing their countries' new and more democratic systems in the late 1980s and the 1990s (or in Nigeria's case, in 1999) begin to backtrack in attempts to stay in power.

Term limits

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

First, that a good principle is not introduced in one country is no excuse for not introducing it somewhere else. This argument should resonate well with proponents of "an African style of democracy". These proponents often complain that the ideals and institutions of the colonial powers should not be imposed wholesale on African countries, but should be adapted by Africans to their own cultures and needs. The need for term limits in Africa is related to the earlier discussion in this study of the human and national security threats related to transfers of power

on the continent. Too often power is shifted from one leadership to another through violence or the threat thereof. African leaders have tended to remain in office for too long, in many cases for several decades, usually becoming increasingly unresponsive to the needs and wishes of the population as the years go by. A prudent look at the continent's post-colonial history should thus lead to the conclusion that term limits are not just desirable, but necessary.

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

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

Term limits for executive heads of state and government have been introduced in all but one of the eight countries during the course of the last ten to fifteen years. The exception is Ethiopia, where there is indeed a limit of two terms for the head of state – the president – while the prime minister, who is the head of government and holds the real power in the country, has no limitations on how long he may stay in office.

Only three countries have a track record so far of political leaders stepping down voluntarily before or at the end of their tenure. These are South Africa, Ghana and Kenya (in Algeria, presidents have stepped down, but less due to term limits than because they have fallen out of favour with the military powers). Another two countries, Senegal and Nigeria, have introduced

the necessary constitutional safeguards so recently that we will have to wait and see whether these will be respected. In Uganda, President Museweni's second and final term under the new constitution expires in 2006. There is uncertainty over whether the Ugandan president intends to respect this limit, or whether he will seek to change the Constitution. Fears that he will cling to power are not unfounded: Uganda has never experienced a peaceful transfer of power from one leader to another since independence. Military *coups d'état* and civil wars have been the norm.

In one country – Ethiopia – there is no intention to introduce term limits for heads of government in the foreseeable future. Finally, in Algeria, the question is, at one level, a matter of whether incumbents will step down voluntarily and not due to undemocratic pressures. However, at a deeper level, the situation is similar to Ethiopia: there is little chance that one of Algeria's most powerful political actors, the army, will ever have term limits imposed on it. The army's decision to remain in the background during the 2004 presidential election was an important step, but it is too early to say whether this will be a lasting improvement.

Independence of the judiciary

A major task of the judiciary is to provide criminal justice. However, an equally important task, particularly for the higher courts, is to function as the third independent arm of government, checking the legality of the executive's policies and balancing the executive's urge for far-reaching powers with the constraints of the constitution. The independence of the judiciary is therefore a necessary component of a well-functioning and vibrant democracy. It is a safeguard against arbitrary use of power by the executive branch against individuals and groups within the population.

When reviewing the independence of the judiciary, it is necessary to make a distinction between, on the one hand, constitutional and legal guarantees, and on the other, the degree to which this independence is respected in practice by the executive powers as well as by judges themselves. Studied according to these two criteria, the eight countries fall into four categories. This first category has strong constitutional and legal safeguards against political interference in the work of the judiciary, and political actors also respect these

in practice. In this group we find South Africa in a class of its own. In the second group are the countries that have the necessary constitutional guarantees, but experience some problems of abuse or lack of capacity in practice. These are Nigeria, Uganda (both of which perform better on this commitment than on any previous ones) and Kenya. In Kenya, the judiciary is formally independent from the executive, but the president's wide-ranging powers and systems of patronage have led to individual members of the judiciary being indebted to him. Kenya has, as a result, had a history of political interventions in individual legal cases. In Nigeria, despite operating in a difficult political context and coming under the pressure of high-level politicians, the judiciary has jealously guarded its independence and has made some courageous decisions that are unfavourable to the executive powers. In Uganda, the strength of the judiciary may become an important pillar on which to build a stronger democracy in the future.

The third category includes Ghana and Senegal, which have both tended to score higher on the other commitments reviewed in this study, but have some flaws in the constitutional guarantees and institutional arrangements of the judiciary – flaws that are reflected in some political abuses of the legal system. Nevertheless, the judiciary performs relatively well despite these weaknesses. In the fourth group come Algeria and Ethiopia. The constitutions of both countries provide insufficient protection of the judiciary against serious political abuses of the judicial system that have taken place during the review period.

A problem common to all eight countries is the judiciary's lack of resources, staff and infrastructure. While this problem may be more acute in some countries (Nigeria) than others (South Africa), it is a serious hindrance for the judiciary's ability to perform its proper role. A long backlog of cases poses a less serious threat to democracy in countries that suffer little political interference with the judiciary than in countries where the law is used as an illegitimate political tool of coercion. Some countries, like South Africa and Ghana have, or are about to put in place, particular mechanisms to make sure that politically sensitive or otherwise important cases are fast-tracked. In other countries, political disputes have to wait as long as other cases, thus undermining the workings of democracy. In Nigeria, for instance, none of the hundreds of complaints filed immediately after

the 2003 general election had been heard eight months later. In Ethiopia, the situation is similar, and none of the representatives of the country's previous political regime, who were deposed and arrested in 1991, has yet been sentenced.

Generally, the review of the independence of the judiciary revealed many positive policies and practices – as well as some problems and shortcomings. The overall conclusion is that African judiciaries have often fought effectively for their independence and for the respect of their countries' constitution, even when faced with severe obstacles, including the harassment and murder of judges.

Conclusion

A relatively clear picture was built over the course of this review, i.e. that there is a palpable difference between Ghana, Kenya, Senegal and South Africa, on the one hand, and Algeria, Ethiopia, Nigeria and Uganda, on the other. The latter group tended to fare worse on most of the indicators and have in common the problem that powerful political actors often operate outside the norms and principles of democracy.

In Algeria and Nigeria, the role of the military remains central for understanding the political dynamics of the country, although in Nigeria they have receded more into the background and there are some positive signs that the same may happen in Algeria. However, considering the long history of military coups in Africa's most populous country, the potential interference of the military, if election results go against their preferred candidate (despite rigging and manipulations), still looms over Nigeria's democratisation process. Nevertheless, there are many redeeming features of Nigeria's political system, such as the relatively independent judiciary and the many improvements since the return of civilian rule in 1999. In Algeria, an important step was taken in 1989, and the 2004 election provided a long hoped for new impetus into the country's democratisation process.

In Ethiopia and Uganda, military coups are perhaps less of an issue, but both countries have a political leadership which lacks democratic credibility. There are few signs that the existing political regimes would give up power voluntarily to an opposition party, regardless of its popular support or election victories.

This seems particularly clear in Ethiopia, where power transfers (except after the natural death of the leader) have never taken place peacefully. A system of bureaucratic hindrances combined with intimidation and harassment has ensured that opposition parties are kept in check. In Uganda, the government's commitment to democracy is more ambivalent. Many positive developments have taken place over the last ten to fifteen years, including the adoption of a new constitution in 1995. However, the next few years will show whether Uganda progresses further down the path of democracy or lapses back into one-party, one-person, authoritarian rule. Whether President Yoweri Museweni decides to run for a third term or not will be a key indicator of which path Uganda will choose.

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

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

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